

MT LEGISLATIVE HISTORY

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Year 1985

Bill # HB 607 Original bill & hist. ☒ C

H. Committee on Taxation

S. Committee on Taxation

Hearing Date(s) 2/14/85 ☒ C
2/20/85 ☒ C
3/19/85 ☒ C
3/20/85 ☒ C

Hearing Date(s) 4/11/85 ☒ C
 ☐ C
 ☐ C
4/17/85 ☒ C

Date Out 3/20/85 ☒ C

Date Out 4/17/85 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee

Minutes

Report

RETURNED TO HOUSE

3/28 SIGNED BY SPEAKER

3/28 SIGNED BY PRESIDENT

3/28 TRANSMITTED TO GOVERNOR

4/01 SIGNED BY GOVERNOR

CHAPTER NUMBER 282 EFFECTIVE DATE: 10/01/85

HB 607 INTRODUCED BY QUILICI, PECK, ET AL.
PRODUCTION INCENTIVE TAX CREDIT TO COAL SEVERANCE
TAX
BY REQUEST OF OFFICE OF THE GOVERNOR

2/01 INTRODUCED

2/01 REFERRED TO TAXATION

2/02 FISCAL NOTE REQUESTED

2/08 FISCAL NOTE RECEIVED

2/14 HEARING

3/21 COMMITTEE REPORT-BILL PASS AS AMENDED

3/25 2ND READING PASS AS AMENDED

65 35

3/27 3RD READING PASS

63 37

TRANSMITTED TO SENATE

3/28 REFERRED TO TAXATION

4/11 HEARING

4/18 COMMITTEE REPORT-BILL CONCURRED

4/18 2ND READING CONCURRED

33 15

4/19 3RD READING CONCURRED

37 13

RETURNED TO HOUSE

4/23 SIGNED BY SPEAKER

4/23 SIGNED BY PRESIDENT

4/23 TRANSMITTED TO GOVERNOR

4/25 SIGNED BY GOVERNOR

CHAPTER NUMBER 636 EFFECTIVE DATE: 4/25/85

HB 608 INTRODUCED BY M. WILLIAMS
MANDATORY APPROVAL FOR TUITION WHEN STUDENT
TRANSFERRED ON COURT ORDER

2/01 INTRODUCED

2/01 REFERRED TO EDUCATION & CULTURAL RESOURCES

2/13 HEARING

2/16 COMMITTEE REPORT-BILL DO PASS

2/18 2ND READING PASS

98 1

2/20 3RD READING PASS

98 0

TRANSMITTED TO SENATE

2/22 REFERRED TO EDUCATION & CULTURAL RESOURCES

3/13 HEARING

3/18 COMMITTEE REPORT-BILL CONCURRED

3/21 2ND READING CONCURRED AS AMENDED

48 0

3/23 3RD READING CONCURRED

49 0

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 14, 1985

The twenty-sixth meeting of the Taxation Committee was called to order by Chairman Gerry Devlin on February 14, at 8:05 a.m. in room 312-2 of the state capitol.

ROLL CALL: All members were present as was David Bohyer, Researcher for the Legislative Council, and Alice Omang, secretary.

CONSIDERATION OF HOUSE BILL 607: Representative Quilici, District 71, Butte, stated that this bill is very important to the state of Montana and its people and gave some background on this bill, which will allow a production incentive tax credit to the coal severance tax. He commented that in 1975, they did not know what was going to happen concerning the coal tax, but now times have changed and circumstances have changed. He continued that in the coming years, coal contracts are going to expire and when they expire, if the state is not competitive, they are going to lose those contracts; and if they lose those contracts and the Montana coal severance tax drops, this state is in a lot of trouble. He answered the question of what would happen if no new production or sales occurred during the window of opportunity by saying "absolutely nothing - Montana will continue to receive the current severance tax on all existing production and the window of opportunity closes." He explained that if new production occurs and new contracts are signed that the state will get \$2.00 a ton and it looked as though there could be a contract signed that would have a price tag on it of around \$75 million. Then, he said, if this does happen, Montana will have solid evidence to decide whether the tax rate is really effective.

PROPOSERS: Representative Marks, District 75, Clancy, stated that he was one of those who voted against the severance tax in 1975; he did not understand the horror stories and did not agree with them. He exclaimed that he thought this was a step in the right direction as the state has been criticized as being anti-business and for trying to create an image where business cannot survive.

cannot survive. He indicated that it costs about 1.7 to 2 cents a ton-mile to ship coal no matter where it comes from and what Montana has going for it in that regard is that we are a little closer to the market and we have a slight advantage there.

Teresa Cohea, the Governor's Chief of Staff, offered Exhibit 1 as testimony in support of this bill. She also offered proposed amendments to this bill. See Exhibit 2.

James Mockler, Executive Director of the Montana Coal Council, said that he was very gratified to the governor, to Representative Quilici and to all the representatives that had the courage to sign this bill because the coal tax is more emotional to most people than it is factual. He offered some proposed amendments to this bill. See Exhibit 3. He explained that the bill does not apply to renewal of contracts once they are scheduled to expire and they would like to have it included-that if those renewed contracts are extended for five years or more, they also would receive the rebate, after they are scheduled to expire. He offered Exhibit 4.

Paul Polzin, Director of Forecasting at the Bureau of Economic Research at the University of Montana, outlined Montana's coal industry and said that it was facing an uncertain future. See Exhibit 5. He also passed out the booklet, "Montana's Coal Industry", which is Exhibit 6.

Martin White, Chairman of the Board and Chief Executive Officer of Western Energy Company, testified that he has been involved in the coal industry since 1966 and he knows that the companies involved in Colstrip have spent \$52 million to help with the local impact and the coal industry has been a good citizen from the socioeconomic standpoint. He explained that mining conditions in Montana are different than they are in Wyoming as, because the overburden is thicker on the average and the seams are thinner on the average, Montana's coal industries generally have to disturb 100% to 200% more acres to get the same amount of coal that they do in Wyoming and then they have to reclaim them, so their operating costs are higher. However, he continued that Montanans should be

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proud that the Montana worker and miner has had one of the highest labor productivities - and in their mine, they have had the highest productivity in the United States - and that is important to the state of Montana.

Lanny Icenogle, Project Manager for Montco, offered testimony in support of this bill. See Exhibit 7.

J. R. McPherson, Director of Affairs for Nerco Mining Company, which operates the Spring Creek Coal Mining Company in Big Horn County, Montana, and owns 50% of the Decker Mine, told the committee that Nerco believes that this committee should take an additional step by allowing the severance tax relief to all existing purchasers of Montana coal. He testified that in 1984, the state received more than \$89 million in severance tax and that approximately \$17 million was credited to the general fund. He continued that they are important customers today and they hope that they will choose to return to Montana when they need additional coal and when their existing contracts expire. See Exhibit 8.

Norman Starr, a rancher from Melville, Montana, currently serving as president of the Western Environmental Trade Association, advised that they were strongly supporting this bill and the amendments proposed by the Montana Coal Council. He testified that his property tax has risen 50% in the last eight years and that with coal sales in Montana, that means jobs and if the working man is making money, he is going to eat steaks and that is going to help him. He concluded that this bill is right on track and it is something that the committee can do to help agriculture and it does not cost the state of Montana one dime.

Brett Boedecker, representing Glendive Foward and Project Baker and Wibaux, the Glendive Chamber of Commerce and People for Economic Progress of Brockway, Montana, offered testimony in support of this bill. See Exhibit 8-2.

Joe Presley, representing Westmoreland Resources of Billings, stated that they are operating a mine that is producing approximately 4 million tons a year, but they have the capacity to produce 10½ million tons and all of their contracts expire in 1993 and unless they get extensions or new contracts, they are out of business in 1994. See Exhibit 9.

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Duane Friez, representing Glendive Forward gave a statement in support of this bill. See Exhibit 10.

Glen Moore, a farmer in Ekalaka, past president of the Montana Grain Growers, chairman of the Wheat Commission, and past president for the National Association of Wheat Growers and presently the president of the Wheat Foundation in Montana, stated that they were interested in all the industries in Montana and would like to be in support of this bill.

Mike Keeting, Business Representative of the Operators' Engineers 400, said that they would like this bill to pass and gave it their support.

Forrest Boles, President of the Montana Chamber of Commerce, and also speaking for the Great Falls Chamber of Commerce, stated that Montana does have a negative business interest and the high coal severance tax does contribute to that image.

Jim Stephens, Past President of the Montana Grain Growers and the International Trade Commission, offered a statement in support of this bill. See Exhibit 10.

John Ravenberg, representing the Wolf Point Chamber of Commerce and the High Plains Land and Mineral Association, urged the committee to pass this bill.

Henry McClurnan (?), Acting Director of the Montana Mines and Geology, said that they assist in the development of Montana's mineral resources and they do that through research that would improve the quality of the value of coal, and they support this bill.

Ward Shanahan, Chairman of the Coal Tax Subcommittee of the Natural Resources Section of the American Bar Association and a director of the Montana Mining Association, gave a statement in support of this bill. See Exhibit 11.

Dave Goss, representing the Billings Chamber of Commerce, indicated that they were very concerned about the future of coal and the impact it will have on them. He said that they support this bill.

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Bill Olson, representing the Montana Contractors' Association, stated that they wholeheartedly support this bill.

Paul Miller, representing Meridian Minerals in Billings, indicated that they own substantial coal properties in eastern Montana and they would applaud the governor's initiative in this matter.

Bob _____, independent businessman from Butte, Montana and also a member of the Governor's Advisory Council, commented that he thought this was a very constructive bill and would allow the coal industry to be competitive and also would protect the state for existing and upcoming contracts.

Representative Bob Bachini, District 14, Hill County, gave a statement in support of this bill. See Exhibit 12.

Mike Fitzgerald, President of the Montana International Trade Commission, said that they firmly support this bill.

John Brauer, Professor of Economics at Montana Tech, said that they examined and reported on the economic impact of coal mining in Montana, which they should receive very shortly. He explained that coal mining employs about 1300 people directly, it spins off an additional 2,300 jobs in other sectors of the Montana economy, it generates another \$34 million in wages outside of the \$50 million spent on wages in coal mining and generates another \$95 million in business activity. He continued that the loss of 100 jobs in coal means the loss of 200 other jobs elsewhere in the economy of Montana. He stated that he did not agree with the Silverman-Duffield report that the future of coal is assured and he felt that they were in bad shape and he thought they would see the aluminum plant go under in Columbia Falls.

Jim Hodge, owner of Columbia Chemical in Helena, urged the committee to have a clear view as to this issue and he thought that in the coal market, it was a buyer's market and he supported this bill.

There were no further proponents.

OPPONENTS: Senator Towe said that the proposal was that they give an incentive and he asked them to read the bill carefully, if they thought it was an incentive.

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He indicated that this was one of the most complex pieces of legislation that they have had before the legislature. He passed out to the committee Exhibit 13, which are arguments against lowering the coal tax. He also passed out Exhibit 14, which shows the Montana market area and the Wyoming area. He also explained the effect of a tax decrease on production and revenue. See Exhibit 15. He also explained to the committee how much Montana would stand to lose if this bill were passed. See Exhibit 16.

John Driscoll, a former legislator, said that he was the house majority leader in 1975, when this coal tax was passed and he strongly opposed this bill.

Vernon Bertelsen, Ovando, representing himself, said that this has been studied by Professors Silverman and Duffield, who have no axe to grind, and he thought they should look closely at the answers these experts have provided. He emphasized that Montana cannot help but lose taxation revenue if this legislation is passed and he would urge the committee to reject this bill.

Sherlee Graybill from Great Falls offered testimony in opposition to this legislation. See Exhibit 17.

Keith Powell, a rancher south of Miles City, and the present chairman of the Northern Plains Resource Council, gave a statement in opposition to this bill. See Exhibit 18.

Howard Best, rancher from Broadus and president of the Powder River Protective Association, offered testimony in opposition to this bill. See Exhibit 19.

Jerry Calvert, representing the Bozeman Environmental Information Center, gave a statement in opposition to this bill. See Exhibit 20.

Eric Feaver, president of the Montana Education Association, stated that currently 15% of the coal tax revenue goes to public education in Montana and this bill would chip away more revenue base and he felt that this was not a risk worth taking.

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Carol Farris, Great Falls, said that she was speaking in place of Phyllis Moore, who is president of the Montana State Democratic Women's Club, and offered a statement. See Exhibit 21.

Don Reed, representing the Montana Environmental Information Center, gave a statement in opposition. See Exhibit 22.

Jim Murray, representing the Montana State AFL-CIO offered testimony in opposition to this bill. See Exhibit 23.

Susan Cottingham, representing over 1,000 members of the Montana Chapter of the Sierra Club, stated that they maintain that the need for this tax is just as great today and that they need this in the future. She indicated that she would be tempted to call this the Sherco relief bill.

Tony Jewett, Executive Director of the Montana Democratic Party, offered testimony in opposition to this bill. See Exhibit 24.

Jim Smith, representing the Montana Human Resources Development Council, said that they have a growing alarm for the concern and interest of the 120,000 some Montanans whose income put them officially below the poverty level. He said he came to this hearing with an open mind, but he would have to oppose it in the absence of evidence that this would help the poor.

Earl Reilly, representing the Montana Senior Citizens' Associations, urged that the committee not pass this legislation. See Exhibit 25.

There were no further opponents.

QUESTIONS ON HOUSE BILL 607:

Representative Ream asked Mr. Duffield or Mr. Silverman if they would comment on their report.

John Duffield, Professor of Economics at the University of Montana, explained that they were asked to provide

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a long-range production forecast for Montana coal and in doing this, had an opportunity to see how the historical market had evolved. He also gave information on what they looked at and how they came to the results that were in their report. See Exhibit 25-2. He concluded that, in his mind, the coal industry was in good shape in the long run from what the indicators tell him and that right now they are in a very soft market - Wyoming's average contract price is \$9.77 for southern producers and the new bids are going out at \$6.30, so he felt they were in an unusual situation.

Representative Asay commented that he had indicated that the plant in Billings, under current conditions, would not go to Montana and asked Mr. Duffield to elaborate.

Mr. Duffield replied that he calculates that since this plant is only 110 miles further from the Gillette coal source than from Colstrip that there is a difference there just for transportation of about \$2.00 and if current prices (which is something they had the least information on) are around \$9.50 (and maybe they are at around \$11.00) and using the \$11.00 figure, they would need a \$9.00 Wyoming bid, assuming other coal characteristics are similar. Bids in the market area are around \$5.00 to \$6.00.

Representative Asay asked about how they arrived at their figures.

Mr. Duffield responded that there was a number of figures that they did not have access to because of confidentiality and one of those was price and for current contracts they used actual numbers from the Department of Revenue.

Representative Asay asked if they can still reach a firm conclusion even though they are using figures that are somewhat questionable and asked if this was a valid way for an economist to perform.

Mr. Duffield responded that if he was using dubious information, it would not be, but he was using uncertain information and the appropriate approach in that situation is to do sensitivity on the range of reasonable differences, so they looked at coal prices for Montana on the order of \$10.50, \$9.50 and \$8.50, which he felt was a reasonable range. He explained that for Wyoming, they looked at a range from \$5.00 to \$9.00 and he did not think that was dubious.

Representative Asay said that he had made some comment that \$1.00 in reduction in the coal severance tax would not have a significant effect.

Mr. Duffield replied that that was correct and that is consistent with the results of Mr. Wood.

Representative Asay observed that the Montana Trade Commission indicated that a 6 cents per ton reduction in the delivered price of coal regardless of where it came from actually ends up to be a saving of \$1½ million for a typical plant so it would indicate to him that that \$1.00 reduction has considerable significance. He asked if he was still willing to back his statement that \$1.00 is not significant.

Mr. Duffield responded, "You bet - he was completely in agreement with Mr. White when he says that the severance tax he does find in his face-to-face dealings with coal buyers is significant and that that is part of a larger truth that the delivery price is significant; and if it is significant, you can then use our model as they have looked at the difference in actual delivery costs." He indicated that he agreed that 50 cents is \$1½ million and that that looms very large in the operation costs and the price for the coal producers and they are strongly interested in that. He continued that where the market comes into that isn't delivery price - for the market that is 3 or 4% of the delivery price.

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Representative Harp asked about point 9 in his summary and asked him if he was talking about long term or short term.

Mr. Duffield responded that he was talking very much so about long term. He indicated that that report is only long term and they should insert a qualifier there and he would support the statement by Terry Cohea that they have designed a bill that results in a break-even on the tax revenue effects.

Representative Harp asked about the differences between Rock Shell, Wyoming and Colstrip, Montana - that the difference between those two is really only 5 cents and he asked if he was comfortable enough today to tell the people in this committee that we can afford to risk 5 cents for the possibility of losing a \$75 million contract to Wyoming.

Mr. Duffield answered that it is 5 cents for million BTU and he is really talking about risking several million dollars.

Representative Harp said that if he was a person in the market place looking for the lowest price, he would be looking at 5 cents and nothing else.

Mr. Duffield answered that he has presented these numbers as what he thought was the most valid and, if he agrees with these numbers, it would show that they already have that contract, so dropping that 5 cents results in a net loss of that revenue.

Representative Harp reiterated that the question is if they really do have that 5 cent advantage and with the possibility of losing \$75 million contract to Wyoming, did he feel that Wyoming could undercut that and come in with 1 cent less and the representative from Western Energy testified that he had received a contract with a one cent difference.

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Mr. Duffield replied that he felt it was a gamble and he would call the odds - if Montana comes in with \$10.50 coal - the odds of Montana getting that contract are about 60%. He continued that if they come in with \$9.50 coal, the odds are around 75% and if they come in with \$8.50 coal, the odds are about 95% and that is how he would call the gamble.

Representative Sands requested that Vic Woods comment about the Duffield study.

Mr. Woods replied that the first he saw of this report was probably last September or October and he has not seen the one the committee has in front of them. He explained that he observed, at that time, it was not done in the fashion that they in the market world would do a report as they would go out and talk to the utilities to understand exactly what they are trying to do and all of the options that they have. He commented on Sherco #3 and explained his position.

Representative Raney asked Ms. Cohea if the purpose of the bill was to lower the tax and increase production.

Ms. Cohea answered that the purpose of this bill was to stimulate new production in the state.

Representative Raney questioned if there would be an increase in coal production in Montana even if they do not pass this bill.

Ms. Cohea replied that current production last year was 33 million tons and they have identified contracts and production within the next several years of 38 million tons and that is included in the base and not subject to credit and they do foresee growth at least to 38 million tons.

Representative Raney asked if any increased production over the base level means that the challenge has been met by the coal companies.

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Ms. Cohea responded that they are not trying to set the criteria by which the legislature will decide if the challenge has been met - that is the decision that the legislature and the people of Montana must decide.

Representative Raney questioned if all the facts and figures regarding transportation and coal sales would not have to be available in order for the legislature and the people of Montana to decide this.

Ms. Cohea replied that any decision the legislature makes is always based on the best information available and the amendment she presented this morning would increase the amount of information that is available to the committee. She informed him that the state of Montana, however, has no control over disclosure of rail cost information - that can be inferred from information that is filed with the Federal Energy Regulatory Commission, and their proposal would make public everything that possibly could be made public.

Representative Raney stated that the fact still exists that there is no way they will really know all the facts and figures involved in these coal sales and transportation costs - they will only know what the rail companies and the coal companies are willing to let known. He asked if this was correct. He indicated that right now Burlington-Northern will not let them know its transportation costs and he asked if she thought they would let them know those costs.

Ms. Cohea answered that she would not predict what Burlington-Northern would do but she would tell him that the utilities are required to file with the Federal Energy Regulatory Commission the delivered price so the legislature will know exactly how many tons were sold, exactly who they were sold to, how long the contracts are for and what the delivered price is at the utility.

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Representative Raney noted that someone is going to have to determine whether the coal companies have met this challenge, and it will be the legislature to decide this, and if they decide that the challenge has been met, would that mean that the governor or his staff will come after us to permanently lower the tax to 20% instead of 30%.

Ms. Cohea responded that when you start an experiment, you don't decide what the results will be and what you will do for the next step - they are offering an opportunity to run a real life experiment to determine how important the severance tax rate is and the legislature will determine the outcome of that test and nobody knows now what it will be nor do they know what will happen years from now.

Representative Raney indicated that two years from now they will have to go on basically the same kind of information that can be supplied to them right now and that information has been supplied to them right now by the Duffield-Silverman report and yet, the governor has not chosen to use that report because, if he had, obviously this bill would not be proposed and he asked how would they know more about the market place two years from now than they currently know.

Ms. Cohea answered that, if she understood what Mr. Duffield said, his forecast is long range - out to the year 2000 - and she would submit to the committee that in 1987, they will know what happened in 1985 and 1986. She stated that the 1987 legislature does not have to take any action - this bill sunsets.

Representative Raney indicated that she made the statement that this bill would not cost Montana revenue and he would submit that there are all kinds of contracts that they could obtain, if they are available, in Wisconsin and Minnesota that would

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be impossible for Wyoming to compete with - they would have to give their coal away to compete with Montana, so if we take on the 20% reduction, we would have gotten those contracts anyway, so what we have done is given away 1/3 of our coal revenue that would have been the states in hopes of getting the Sherco contract, so we may give away 1/3 for three or four contracts in hopes of getting just that little area that Wyoming can compete in.

Ms. Cohea replied that all the studies say that the Sherco contract is the only new contract that is on the horizon during the next five years. She emphasized that this bill is over in two years, so she does not see that risk.

Representative Raney stated that this is then a Sherco bill.

Ms. Cohea answered that there are three circumstances in which all purchasers of Montana coal can benefit from this bill - they can purchase more under existing contracts during the two-year period, they can renew existing contracts and get the credit on incremental production for the life of that contract or new contracts - not just long term and major ones - but spot contracts can also get this credit so there are a number of ways that they can benefit from this bill.

Representative Raney observed that none of the contracts that Westmoreland and Peabody have are going to expire before 1993 so he wondered why they were chasing this in 1985 - they could do like a study between now and 1989 and then make up their mind and he asked why they are rushing into this because they are only getting to examine this for about a month's time and then they have to make their decision and he asked if this was proper.

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Ms. Cohea replied that the Coal Tax Oversight Subcommittee did an exhaustive study of coal taxation and coal market issues during the last interim. She indicated that there are major contracts that are coming up in 1992, there are smaller ones coming up in 1987 and 1988, but the important point is that the purchasing agents for those contracts say that utilities' coal source decisions are not made lightly and as John Driscoll testified there is 'build a boiler' for the coal you are going to burn so if you are going to decide to change your existing contract and go to a new producer, you have to make significant changes in your boiler so the contracts that expire in 1993, the utilities are already assessing the market and trying to determine what coal they are going to buy.

Representative Schye asked Ms. Cohea what her reaction was to the amendments.

Ms. Cohea replied that she can answer for the governor and they have specifically looked at this amendment and the governor does not support it and the reason is that they feel very strongly that they must hold to the current severance tax rate on all current production in order for the people of Montana to have an opportunity to look at whether modification will increase production, so allowing the credit to the base is not what they want.

Representative Ream asked about the language concerning information that would be available to the legislature.

Ms. Cohea answered that that language is exactly patterned upon the current law regarding corporation tax returns - those are held confidentially, but the legislature saw fit to enact a provision that if they felt a corporation was somehow not complying with Montana law to allow the governor to make public those returns. She indicated that, to her knowledge, this has never been done, but

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we included that provision in the bill so that all the information that is now public will continue to be public and, in fact, additional information will be public. She clarified that it would be an additional safeguard to allow the legislature to determine if the contracts were being dealt with properly as there would be a procedure to make these contracts, which are not now available to any member of the public, available under extreme circumstances.

Representative Ream said that he was concerned that they are the policy-making body, they are passing laws like HB 607 that could have grave implications and it seems as though the Revenue Oversight Committee should have all the tools available to them.

Ms. Cohea replied that she cannot say today what would happen prior to that time, but she thought it was a good concern and would be something that could be discussed.

Representative Ream asked how they are going to measure success - she said that Sherco was the only major new contractor that is coming on line and if they get the contract would this be considered successful and if they don't, what would that mean.

Ms. Cohea answered that that is something that every legislature and every citizen of Montana will have to decide for themselves, but there are other markets other than the Sherco - there are spot contracts, there are existing contracts if more can be taken under their renewal - there are a number of measures but, again, that is a legislative decision.

Representative Devlin asked Mr. Mockler if he could think of some other companies other than Sherco that this would address.

Mr. Mockler replied that Sherco is the only one that he knows is out for bid at this time, but he

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has heard that there could possibly be a contract from Wisconsin Power and Light and he thought it would be of significant size.

Representative Raney asked Representative Quilici about receiving information on transportation contracts and sales contracts.

Representative Quilici replied that the transportation costs are confidential, but he felt this bill has all the safeguards that he could possibly see and he would oppose any amendments except those put on by Ms. Cohea, which would strengthen this act. He continued that nobody is sure that this piece of legislation is going to work, but, if they do not do something in this session, he could be sure that by the next session, they will not have a budget big enough to fund one city.

Representative Raney pursued the question of getting information.

Representative Quilici indicated that he has looked at this piece of legislation pretty thoroughly and he could tell him that he has as much concern for the people of this state as anyone else and he also felt they had enough safeguards built into this so that he should not have to worry about what will happen on June 30, 1987. He continued that this is a very tough bill, but there is no way, in his mind, that this bill will do any harm to the people in the state of Montana and he felt that any new production that comes into this state will benefit them.

Representative Koehnke asked Mr. Mockler if he thought that Burlington-Northern would help them by lowering their freight to try and keep this business.

Mr. Mockler responded that the utilities that buy their coal have repeatedly stated that the freight rates on a ton-mile basis are virtually identical for Montana as they are for Wyoming and he did

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not think that Burlington-Northern has either raised or lowered its rates for a long time nor did he think they were able to do this because their customers know what the freight rate is from Wyoming.

Representative Schye asked if the amendment they put on was put on in good faith after all the work and compromises were put on the bill.

Mr. Mockler answered that he was not involved in the negotiations at all - some of the companies were and some were not - but he did not offer the amendment in bad faith - he offered it as a choice to this committee as he thought it would be worth it to encourage the customers to extend those contracts.

Representative Cohen asked if Mr. Silverman could make some comments.

Mr. Silverman said he would like Mr. Wood to read their present report as the calculations they have made are almost identical to Mr. Woods in terms of the future of coal in Montana and the lowering of price of Montana coal. He stated that he was disturbed about some of the comments concerning the gloomy future of coal in Montana and that in 1975, ten years ago, they were much more pessimistic about the future, but he felt that Montana's future for coal is a positive growth future and he thought that they would be mining twice as much coal fifteen years from now with the upper level of growth that they suggest will happen. He concluded that they are very positive about the Montana coal industry in the future - it is a good one.

Representative Asay asked Mr. Wood that Mr. Duffield and Mr. Silverman thought the future of coal was very bright if they did absolutely nothing and he wondered if he concurred with that.

Mr. Wood replied that he did not and he thought the atmosphere of coal mining is such that there are going to be significant purchases of coal and coal is bought five to seven years before hand and he felt there was going to be significant opportunities and unless some type of incentive is there, there is a strong chance that Montana will not participate.

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Representative Quillici handed out to the committee Exhibits 26 and 27. He stated that everyone is concerned about Montana's coal tax and you have to give the governor a lot of credit for working out this type of bill and it is a step in the right direction.

The hearing on this bill was closed.

ADJOURNMENT: There being no further business, the meeting adjourned at 11:35 a.m.

GERRY DEVLIN, Chairman

Alice Omang, Secretary

DAILY ROLL CALL

HOUSE TAXATION

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date February 14, 1985

NAME	PRESENT	ABSENT	EXCUSED
DEVLIN, GERRY, Chrm.	X		
WILLIAMS, MEL, V. Chrm.	X		
ABRAMS, HUGH	X		
ASAY, TOM	X		
COHEN, BEN	X		
ELLISON, ORVAL	X		
GILBERT, BOB	X		
HANSON, MARIAN	X		
HARRINGTON, DAN	X		
HARP, JOHN	X		
IVERSON, DENNIS	X		
KEENAN, NANCY	X		
KOEHNKE, FRANCIS	X		
PATTERSON, JOHN	X		
RANEY, BOB	X		
REAM, BOB	X		
SANDS, JACK	X		
SCHYE, TED	X		
SWITZER, DEAN	X		
ZABROCKI, CARL	X		

Exhibit 1
HB 607
2/14/85
Teresa Cohea

TESTIMONY ON HOUSE BILL 607

by

TERESA OLCOTT COHEA
Executive Assistant
Office of the Governor

Mr. Chairman and members of the Committee, I appear in support of HB 607.

HB 607 reflects the commitment made by the Governor in the State of the State message to give the coal industry a chance to prove that a modification of the coal severance tax will make Montana coal more competitive in the market and thereby encourage expanded production.

Like most legislative proposals, HB 607 represents a compromise -- a compromise between the demands of the coal industry that Montana permanently reduce the tax on all production to a level comparable to or below Wyoming's, and the Governor's insistence on the following:

- a) Montana's existing revenue base be safeguarded;
- b) Montana not engage in a tax rate "bidding war" with Wyoming; and
- c) the proposal be restricted to a limited "window of opportunity", not a wide open door to tax reduction, so that the people of Montana can evaluate whether modifying Montana's severance tax makes our coal more competitive.

HB 607 is based on two important concepts:

- 1) It holds fast to the current severance tax rate on current production and new contracts already signed. This production totals approximately 33 million tons -- 15% above calendar year 1985 production. The "new coal production incentive tax credit" does not affect this production. Therefore, Montana's existing revenue base is not affected.
- 2) The bill has been carefully drafted to insure that the credit will be available only for coal production that exceeds Montana coal customers' existing purchases. Based on verified information, the Department of Revenue would establish "base consumption levels" for each purchaser of Montana coal -- the average of 1983 and 1984 production, plus any new tonnage for which contracts have already been signed. Montana coal producers would be able to claim a 33-1/3% credit for the severance tax paid on coal purchased under one of the following conditions:
 - a) the coal is produced in calendar years 1985 or 1986 and exceeds a purchaser's base consumption level;

①

- b) an existing contract is extended for at least five years for coal in excess of the purchaser's base consumption level;
- c) a new contract is signed for coal in excess of a purchaser's base consumption level.

The contract must be extended or signed during the "window of opportunity" -- January 1, 1985, through June 30, 1987. The credit will apply for the life of any contract signed or extended during the period that meets these criteria.

During the past month, when I've talked about HB 607 with legislators and the public, several questions were consistently raised about the proposal. Let me address those questions now in explaining the bill:

Q. Will HB 607 cost Montana revenue?

- A. No. The credit applies only to production in excess of production already contracted for, so Montana's existing revenue base will not be affected. Simply renewing existing contracts does not make a coal producer eligible for the credit. To be eligible, he must sell "new" coal -- above current production and contract levels.

Some studies suggested that Montana coal producers have a chance -- by "a slim margin" -- at winning new contracts without modifications in the tax rate. That might be -- but it's too important an issue to be left to chance. If Montana doesn't get the major long-term contract that will be let this spring (the only such contract likely to be let in Montana's market area during the next five years), Montana will lose over \$75 million of severance tax revenue over the life of the contract.

Q. Can the "window of opportunity" be closed once we open it?

- A. Yes. In fact, under the Governor's proposal, the "window of opportunity" closes on June 30, 1987. Any extension of the "window of opportunity" or other modification of the tax would require new legislation, which would be debated and decided upon by the legislature.

Q. What if some new production occurs and new contracts are signed?

- A. Two things will occur:

- (1) Montana will gain approximately \$2/ton in tax revenue on all the new production generated;
- (2) Montanans will have solid evidence to decide whether tax rates really affect Montana's coal markets.

Q. Taxes are a smaller component of the delivered price of coal than freight or mining costs. Will the credit really make a difference?

A. It's up to the coal companies, coal haulers, and coal purchasers to prove that it does. For years, they've said that "pennies per ton" can spell the difference between getting a long-term, multi-million ton contract -- or not getting it. This proposal would reduce -- on a temporary basis and under strict criteria -- the severance tax on new coal. This is the only component of the delivered price of Montana coal over which the state has control. The burden is on the producers and haulers, to sell more coal -- cutting their profit margins and production costs if necessary -- to prove that the tax does -- or does not -- make a difference.

Q. Won't changing our coal severance tax rate signal Congress that we've weakened our stand?

A. No. It will strengthen it. During the past four years, Montana has spent enormous effort and over \$1 million defending our right to determine for ourselves the appropriate level for our coal severance tax rate. The U.S. Supreme Court refused to set the rate of Montana's tax saying:

"questions about the appropriate level of state taxes must be resolved through the political process. Under our federal system, the determination is to be made by state legislators in the first instance the state is free to pursue its own fiscal policies..."

Now that we propose to exercise that right, some would argue that we are no longer free to pursue our own fiscal policy! The Governor urges that we exercise the right that we have fought for -- and won -- in both the U.S. Supreme Court and Congress -- to discuss the appropriate level of coal severance taxation.

Q. Is modifying the coal severance tax good public policy?

A. Nearly every session, the Legislature debates and determines the appropriate level for other taxes:

a) In 1981, the Legislature repealed the surtax on income taxes; our largest revenue source;

b) In 1981, it raised the oil severance tax, our third largest tax source; in 1983, the Legislature lowered the same tax by more than 15%.

c) In 1983, the Legislature revised the tax structure on metal mines;

d) Tomorrow, this committee will discuss a bill to cut the oil severance tax in half for oil recovered through tertiary processes.

In most cases, the Legislature doesn't know what effect these changes will have on the industry involved on Montana's economy. HB 607 offers a low-risk way for the Legislature to determine if the level of Montana's severance tax does affect production and sales. Based on solid evidence of what happened during the "window of opportunity," Montanans and the Legislature can decide what the appropriate level for Montana's coal tax should be as we move into the second century of statehood.

2:10:11 2
HB 607
2/14/85
Teresa Cohen

AMENDMENTS TO HOUSE BILL 706

1. Page 6, Line 23

Following: "purchaser" "

Insert: "and multiplying the total by 33-1/3%"

2. Page 9, Line 18

Following: "information"

Strike: "confidential"

Insert: "open to public inspection -- certain exceptions.
All the information filed with the department in
accordance with [section 5] is public record and
open to public inspection, except the coal sales
agreements as specified in (2)(a) and (b) of [Section
5].

3. Page 9, Line 19 through 23

Following: "15-2-201,"

Strike: "the returns", lines 20 - 22 in their entirety,
and "department," in line 23

Insert: "coal sales agreements specified in [section 5] (2)(a)
and (b)"

HB 607

Page 2, after line 21, insert the following new paragraph:

(c) For purposes of calculating incremental production after July 1, 1987, for coal purchases under 2(a) and 2(b) above, the purchaser's base consumption level shall be decreased if and as purchaser's sales agreement(s) expire according to the term of those agreement(s) in effect as of January 1, 1985. The base consumption level shall be decreased by that quantity of coal included in the base consumption level which resulted from purchases under the expired agreement.

Page 9, after line 16, insert the following:

(4) The department shall at the request of any coal mine operator make a formal determination of eligibility of the new production incentive tax credit within 90 days of said request.

Montana Coal Council

Position Paper Concerning Governor Schwinden's
Severance Tax Rebate Proposal

HB 607
3/14/85
Mockler

Governor Schwinden's proposed legislation for a severance tax rebate on new coal sales is a step in the right direction in that it recognizes that the coal industry in Montana is in trouble and needs help. However, the proposal does not address the major problem of contract renewals when a majority of the contracts expire in the mid-1990s. Governor Schwinden's proposal assumes that the utilities purchasing coal will keep their existing contracts in force indefinitely and pay the 38% severance tax on these contracts. This is the one flaw in his proposal. To illustrate the problem let's use the following hypothetical example.

	<u>XYZ Utility</u> Tons in Millions				
	1983-84	1985-87	1988-93	1994	1995
Purchases	7.0	7.5	9.5 ₁	6.5 ₂	2.5 ₃
Base Level Tonnage	7.0	7.0	7.0	7.0	7.0
	---	---	---	---	---
Tons Subject to Credit	0	.5	2.5	0	0

1. Signs a contract for 2.0 million tons during window of opportunity for deliveries starting in 1988.
2. Contract for 3.0 million tons expires and is not renewed.
3. Contract for 4.0 million tons expires and is not renewed.

The first amendment proposed by the Montana Coal Council gives the rebate to existing contracts that are extended for at least 5 years beyond their expiration date. They would only get the rebate during the period covered by the extension and not during the primary term of the contract. If this amendment is not adopted, current customers will get little, if any, benefit from the proposal, and, in fact, would be penalized. New customers would be favored over existing customers and our best prospects for new or continuing business are our current utility customers.

The second amendment we request simply requires the Department of Revenue to certify in advance whether any contract in question would qualify for the tax advantages addressed by HB 607.

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Montana Coal Council

Position Paper Concerning Governor Schwinden's
Severance Tax Rebate Proposal

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	<u>XYZ Utility</u> Tons in Millions				
	1983-84	1985-87	1988-93	1994	1995
Purchases	7.0	7.5	9.5 ₁	6.5 ₂	2.5 ₃
Base Level Tonnage	7.0	7.0	7.0	7.0	7.0
	—	—	—	—	—
Tons Subject to Credit	0	.5	2.5	0	0

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The second amendment we request simply requires the Department of Revenue to certify in advance whether any contract in question would qualify for the tax advantages addressed by HB 607.

HB 607
2/14/85
Polzin

Montana's Coal Industry: Facing an Uncertain Future

Paul E. Polzin
Professor and Director of Forecasting
Bureau of Business and Economic Research
University of Montana
Missoula, MT 59812

- I. Conclusion: Due to deterioration in Montana's competitive advantage, existing coal contracts may not be renewed and/or new coal contracts may not be signed. This may lead to the direct loss of 300 to 500 well-paying jobs with labor income of \$10 to \$18 million per year. Montana's competitive advantage may be improved by reductions in the following:
 - A. The Coal Severance Tax.
 - B. Coal mining costs.
 - C. Transportation costs.
- II. Montana's Economy.
 - A. A slow recovery from recession began in 1983 and continues today.
 - B. Montana's economy will not regain prerecession 1979 peak until late 1985 or 1986.
 - C. Montana has experienced permanent reductions in its economic base resulting in the loss of more than 7,000 jobs.
 1. The loss of a transcontinental railroad (The Milwaukee Road).
 2. The closure of primary metal refineries in Anaconda and Great Falls.
 3. The shutdown of a large plywood plant and sawmill in Missoula.

4. The closure of all Anaconda mining operations in Butte.
 5. The loss of Burlington Northern Railroad jobs due to reorganization and automation.
 - D. The prospects for new basic industries are limited.
 1. A few new small mines.
 2. A few small manufacturing plants.
 3. Expansion of nonresident travel and tourism.
- III. The Contribution of Coal Mining to Montana's Economy.
- A. Coal mining employs 1,300 persons in Montana with labor income of \$53 million.
 - B. Coal mining accounts for 1.6 percent of Montana's economic base as measured by employment, and 3.6 percent as measured by income.
 - C. Coal mining jobs are high paying and steady.
- IV. What Happened to Montana's Coal Boom?
- A. Demise of synthetic fuels.
 - B. Change in air pollution regulations.
 - C. Moderating growth in demand for electricity.
- V. The Outlook for Montana's Coal Industry.
- A. Current contracts call for increase of about 6 million tons per year by 1987. No growth thereafter.
 - B. Contracts totaling 15.4 million tons per year with Minnesota and Wisconsin utilities will expire in 1995 or earlier.
 - C. Two new electric generating plants planned, one in Minnesota and one in Wisconsin.
 - D. Montana's competitive position will deteriorate relative to Wyoming.

1. Scheduled reduction in Wyoming's Coal Severance Tax.
2. A second railroad now serving Wyoming coal fields.
3. New Wyoming mines closer to midwest markets.
4. Revised formula to calculate federal coal royalties.
5. Increases in mining and other costs work to disadvantage of Montana mines.

Exhibit 6
H.B. 607
2/14/85
Polzin



Montana's Coal Industry

facing an uncertain future

Committee
HB 607
2/14/85
Icenogle

Mr. Chairman and members of the Committee, my name is Lanny Icenogle and I am Project Manager for Montco, a proposed surface coal mine in the Ashland area. During the past year, Montco has received its mining permit from the Montana Department of State Lands and is currently seeking coal commitments to enable us to be the first new mine in the State in over 7 years.

Also present here today is Victor H. Wood who is a consultant responsible for marketing efforts for the proposed Montco Project. Mr. Wood was previously in the Coal Purchasing Department of Northern States Power Company of Minneapolis for 23 years. In that position he was responsible for selecting and negotiating the two major long-term contracts now held by NSP with Montana coal operators that were executed in the early 1970's. A portion of my testimony reflects the views of Mr. Wood regarding his coal marketing efforts. Mr. Wood will be available to answer questions regarding Montana's coal market.

HB 607 is a positive step which addresses problems posed by the current severance tax. The Governor, sponsor and co-sponsors

should be commended for taking a creative approach to a problem facing Montanans. Legislation such as HB 607 is needed by the coal industry to remain competitive and will enable the utilities to select and buy increased amounts of Montana coal.

Although we support the "window of opportunity" and are excited about the prospects of competing in the market with an added incentive, there is a problem which has been addressed by previous speakers, which if not corrected through amendment will likely make the bill fall way short of expectations during the window period. As written, the bill will only attract short-term commitments, if at all. The bill as drafted requires purchasers to renew their existing contracts prior to July 1, 1987, at the current 30% severance tax level in order to be eligible for the proposed coal tax credit for additional coal purchases. Montana's existing contracts expire beginning in the early 1990's. Requiring utilities to renew all existing contracts in order to obtain the tax credit on new purchases by making premature judgement of competitive forces is not reasonable. As

such, there is no incentive for long-term commitments which is the intent of the bill.

Utilities are now selecting new plant sites and planning for expansion for the early 1990's, and some will be making coal choices during the 2 1/2 year "window of opportunity" period. Utilities must have assurances of a predictable long-term coal supply and will require that the tax relief for the new supply be completely independent of current tonnage levels before committing new requirements. Any new contract must be guaranteed of the lower tax rate for the entire term regardless of what happens to existing agreements. The absence of such guarantees will turn utilities to other competitive sources that offer such assurances.

Short-term opportunities for lower cost coal will not attract significant tonnage increases. This incentive legislation does not totally address the intended purpose and will leave the impression that such tax credits do not change the competitiveness of Montana coal. This would not serve the intended

purpose or be indicative of the actions necessary to maintain and enlarge the coal industry.

The only assured tax revenue to the State is from existing contracts that begin terminating in the early 1990's. Beyond that is pure speculation for there is little or no assurance at this time of extended terms for all present commitments. Without a true incentive for new production from new and existing mines during the window period, we firmly believe that competitive forces will cause many utilities to change coal sources to the detriment of Montana. Then it will be too late for legislation to save a weakened and diminishing coal industry.

Therefore, I urge consideration and adoption of an amendment to HB 607 that will incorporate such assurance for all new purchases made during the window period. The base consumption level as defined in the House bill must reflect this assurance. Such a change will then reflect the true purpose of this incentive legislation and not affect the presently committed coal production and resulting tax revenue to be gained.

Equally important for new mine developers and utilities is

the bill's lack of a certification process whereby an agreement can be submitted to the Department of Revenue in advance to determine eligibility for "new coal" treatment. The process, similar to an IRS opinion, is absolutely essential where the parties must make large capital investments to develop a mine and in some cases transportation. We think this is equally important to the State which will assure them that the coal is truly "new" coal. We are proposing a simple process to accomplish this and ask the Committee to consider the amendment.

We thank you for your consideration of our comments.

Amendment #1

Page 2, after line 21, insert the following new paragraph:

(c) For purposes of calculating incremental production after July 1, 1987, for coal purchases under 2(a) and 2(b) above, the purchaser's base consumption level shall be decreased if and as purchaser's sales agreement(s) expire according to the term of those agreement(s) in effect as of January 1, 1985. The base consumption level shall be decreased by that quantity of coal included in the base consumption level which resulted from purchases under the expired agreement.

Amendment #2

Page 9, after line 16, insert the following:

(4) The department shall at the request of any coal mine operator make a formal determination of eligibility of the new production incentive tax credit within 90 days of said request.

1/14/85

EX-1016.18
H3607
2/14/85

STATEMENT BY:

NERCO MINING COMPANY ON HOUSE BILL 607

Mr. Chairman and members of the Committee, I am J.R. McPherson, Director of Public Affairs for NERCO Mining Company. NERCO Mining Company owns and operates the Spring Creek Mine located in Big Horn County, Montana. In addition, NERCO Mining Company is 50% owner of the Becker Mines which are also located in Big Horn County. The combined output of these mines was approximately 13 million tons or nearly 40% of Montana's total coal production in 1984.

I am here today to express NERCO's support for the general concept proposed in HB 607 which offers coal producers a window of opportunity to market more coal. We appreciate the interest shown by the Governor and the Legislature in the problems confronting our industry in marketing new coal. Given extremely competitive market conditions, we need legislation such as HB 607 to provide incentives for new coal sales which, in turn, generate additional revenue for the state.

However, NERCO believes that HB 607 must take an additional step by providing severance tax relief to all existing purchasers of Montana coal. We hope that the Governor and Legislature recognize the substantial contribution made to Montana's economy and revenue base by these customers. For example, during 1984 the state received more than \$89 million in coal severance tax of which approximately \$17 million was credited to the general fund. These are important business customers today; and we hope they will chose to return to Montana when they need additional coal and when their existing contracts expire.

In order to achieve this goal, yet be consistent with the Governor's concept, NERCO proposes that existing customers be included among the beneficiaries of HB 607. In addition to the 33-1/3% credit awarded to new purchasers of Montana coal, we recommend taking an additional 16-2/3% of the severance tax collected on these new coal sales and distributing it to existing customers on a pro-rate basis. In simple terms this means the state will receive one-half of the revenue from new coal sales, while one-third will go to new coal purchasers and one-sixth will go to existing customers.

We have drafted a proposed amendment to accomplish this goal and attached it to our written testimony for the committee's consideration.

This approach will not affect the current or projected revenue base, yet it will send a positive message to our existing customers that the state values their business and wants them to remain in Montana. Furthermore, it will send a positive signal to other businesses which might consider locating in this state. In all respects, it would strengthen the effort to "Build Montana."

I urge you to adopt the proposed amendment and give HB 607 a do pass recommendation.

NERCO MINING COMPANY AMENDMENT TO HB 607

Page 6, line 8, insert:

"(3) Of the remaining $66 \frac{2}{3}$ per cent of the tax imposed on incremental production eligible for the tax credit (1) and (2) above, $16 \frac{2}{3}$ per cent will be eligible as a tax credit to coal mine operators producing coal as of December 31, 1984, on a pro rata basis beginning on January 1, 1985. Such coal tax credit shall in turn be refunded to the coal purchaser."

Renumber (3) to (4).

Glendive **Forward** Of Montana

EXHIBIT 8-2
HB 607
2/14/85
Breddecker

HOUSE BILL 607

Dear Mr. Chairman:

Glendive Forward wishes to be a proponent to House Bill 607 with reservation because of the following:

1) It was our understanding and we assumed that the Governor's incentive was to create three (3) things:

A) Preserve current revenue expectations under existing coal contracts until expiration date.

B) Provide an incentive to revitalize Montana's coal industry by providing a tax credit on new coal and it is our understanding that the new coal could come under either existing contracts as well as new contracts.

C) Our understanding that this tax incentive would have equal application to existing producers as well as new entrants in the coal market.

Our reading of the proposed bill would indicate that the following would result:

1) That the state of Montana would preserve its coal tax revenues for the life of existing contracts unless subsequent legislatures were to modify Montana's coal tax structures.

2) That the bill as drafted does not provide an incentive for long-term commitment to existing or new coal producers.

The basis for this statement is predicated on the definition of base consumption level. The bill requires that utilities purchasing new coal from Montana will require them to extend

existing contracts which expire in the early 1990's. The effect of this provision would be to negate the tax credit on new coal. Therefore, our reasoning indicates that a utility presently purchasing coal from Montana would contract for new coal for a period less than the termination date of their existing contract. It is our understanding that purchasers of Montana coal under existing contracts would prefer to maintain their options and flexibility for the purchases of coal upon the termination of existing contracts.

3) The bill induces short-term commitment and takes away the incentive for long-term coal commitment. We, at Glendive Forward, feel that this legislation favors existing producers and provides no inducement for the financing and capital formation necessary to promote new development in eastern Montana. Glendive Forward is interested in expansion of the coal industry and particularly are interested in seeing other counties participate in the economic benefits. Long-term contracts are the catalyst for economic expansion.

Governor Schwinden intends that all interested parties in Montana's coal industry be on par with one another.

Potential new coal development would effect Powder River, Custer, and Big Horn Counties to begin with.

A dramatic benefit of mine development in those counties would result in the maintenance of Burlington Northern's roundhouse and potential expansion of this facility in Glendive. Glendive Forward and the Glendive Chamber of Commerce have been very active in the past year and a half in attempting to secure this facility in Glendive. The problem we face is the 200 mile maintenance

check, which right now potentially leans itself towards having this facility in Mandan, North Dakota.

With the new mines being created in the above forementioned counties and the building of a rail spur to these potentially new mines, would create approximately an additional 100 miles of rail. This would result in Glendive being in the center of a 200 mile maintenance check. Glendive, as well as Dawson County and the state of Montana, are in need of having this facility because without it we have lost a strong employment base and tax revenue that would be sorely missed.

It is also our feeling that any attempts to maintain the state's present production levels without being dictated by the marketplace are doomed to failure, just as our recent example of OPEC would indicate.

The Governor's bill is intended to give the coal industry the opportunity to put up or shut up in order to demonstrate whether or not the coal severance tax issue effects the marketability of Montana coal.

Mr. Chairman, may I submit that this incentive needs to be amended in order to promote long-term coal commitments during the window of opportunity. Let me stress that the only effective way that Montana can be assured that it can sustain current production levels beyond the expiration date of existing contracts will be predicated upon the success of Governor Schwinden's initiative. If Governor Schwinden's initiative is not successful in promoting long-term commitment, the proposal will become the window of doom for eastern Montana.

Mr. Chairman, we offer the following amendments and feel if

accepted would create the opportunity that the coal industry needs in order to pass the acid test in 1987.

AMENDMENTS TO HB607

Page ²6 after line ²¹7 insert the following new paragraph:

- (c) However, the base consumption level under (a) & (b) shall be reduced by the quantity of coal included in the original base consumption level purchased under a contract executed prior to January 1, 1985, at the time the contract terminates or would have terminated under the terms of the contract.

Page 9 after line 16 insert the following:

- (4) The department shall at the request of any coal mine operator make a formal determination of eligibility of the new production incentive tax credit within 90 days of said request.

In closing, we feel it is imperative to pass legislation that treats all parties equally and gives everyone who is interested in mining Montana coal, purchasing Montana coal, or any potential new entries into the Montana coal market the same opportunities and incentives.

HB 607

Mr. Chairman and members of the Committee, my name is Joe Presley. I am President of Westmoreland Resources, Inc. Westmoreland Resources owns and operates the Absaloka Mine. We mine approximately 4.2 million tons per year but have a current capacity to produce 12.5 million tons per year.

All of Westmoreland's present contracts expire in 1993. Unless we get extensions on these contracts or acquire new contracts we are out of business in 1994. We have been aggressively seeking new contracts but have not been successful in these efforts. As you know, there have not been any significant new commitments for Montana coal since the severance tax was passed in 1975. Economic professors from the University of Montana may be able to cavalierly say that our existing contracts will be renewed, but their assurance does not give me a lot of comfort.

One argument for not reducing the severance tax is that the Burlington Northern will just increase the freight rates to capture any tax reduction. This is not true for two major reasons:

1. The Staggers Act passed by the U. S. Congress in 1980 granted railroads the authority to enter into long-term contracts with shippers. Since the passage of the Act, all but two of the utilities purchasing coal from Montana have signed long-term contracts. These contracts set the freight rate and provide for the rate to be periodically adjusted for inflation or de-flation. The BN is currently negotiating with one of the two utilities

check, which right now potentially leans itself towards having this facility in Mandan, North Dakota.

With the new mines being created in the above forementioned counties and the building of a rail spur to these potentially new mines, would create approximately an additional 100 miles of rail. This would result in Glendive being in the center of a 200 mile maintenance check. Glendive, as well as Dawson County and the state of Montana, are in need of having this facility because without it we have lost a strong employment base and tax revenue that would be sorely missed.

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Mr. Chairman, we offer the following amendments and feel if

WITNESS STATEMENT

NAME Jim Stephens BILL NO. H3-607
 ADDRESS 415 W. 6th Lane DATE 2/14/35
 WHOM DO YOU REPRESENT? Self
 SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: I am Past Pres of Great Chain Growers - West F.V. - and I am
 a ^{State Commissioner} ~~State Commissioner~~
 I think this bill has merit and should be
 given a chance to work. I am a farmer &
 a motel operator. We in Ag. have been
 told to take less and we'd make more -
 it hasn't worked in Ag. - I do think
 it could work here. - If it does, and all
 other segments of the industry, Bit the Bullett -
 we will all be the benefactors -
 Please look favorable on this Bill
 And give it a chance.

WITNESS STATEMENT

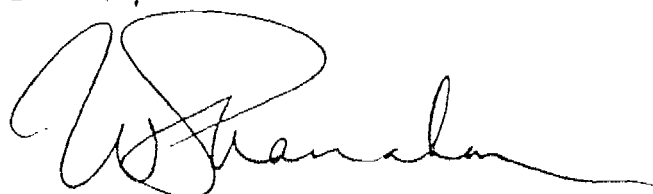
NAME WARD SHANAHAN BILL NO. 607
 ADDRESS 917 GILBERT STREET DATE 2/14
 WHOM DO YOU REPRESENT? MONTANA MINING ASSOCIATION
 SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Mr. Chairman, members of the committee:
 I'm a lawyer in Helena, I serve as chairman
 of the coal tax sub-committee of the Natural Resource
 Section of the American Bar Association. I'm a
 Director of the Montana Mining Association and
 appear here at the request of that association.

Montana must make an attempt to assist
 in the sale of its products. Economic health
 is dependent on production. The Environment
 has been and will be protected. The other side
 of the equation must be addressed. The
 production & sale of our products, particularly
 coal is dependent on a constructive prop-
 osal like HRS 607.





The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM REPRESENTATIVE BOB BACHINI OF HOUSE DISTRICT 14, HILL COUNTY, AND ALSO SPEAKING IN BEHALF OF CARL KNUTSON "STATE LEGISLATIVE REPRESENTATIVE OF BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES" (GANDY DANCERS) WHO IS OUT OF TOWN TODAY. WE SUPPORT HOUSE BILL 607, IF IN ANY WAY IT WILL ACTIVATE NEW COAL SALES FROM MONTANA MINES.

8:00 A.M. FEBRUARY 14, 1935

ROOM 312-2

BB/MFR

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The Big Sky Country

Exhibit 13
HB 607
2/14/85
Towe

MONTANA STATE SENATE

Senator Thomas E. Towe

January 16, 1985

ARGUMENTS AGAINST LOWERING THE COAL TAX

1. COAL TAX IS NOT A SIGNIFICANT FACTOR IN THE TOTAL PRICE.

Mining Costs	=20% of delivered price	(From 1977 FERC Report)
Freight	=60% of delivered price	
Tax (all taxes)	= 9.8% of delivered price	
Profit (Net Income)	=10.2% of delivered price	

Therefore, lowering the severance tax by $33\frac{1}{3}\%$ = 2.6% of total price. The same effect could be produced by cutting:

- a) Profit by 25%
- or b) Mining Costs by 13%
- or c) Freight by $4\frac{1}{3}\%$

2. WYOMING HAS MANY ADVANTAGES.

- a) Less mining costs -- overburden to seam thickness ratio 30% less cost.
- b) Geared up sooner -- before federal coal leasing moratorium.
- c) Over built -- 60,000,000 ton per year excess capacity (Montana has 15,000,000). Therefore, can afford to cut price and compete better.
- d) Closer to markets in South -- \$1.60 to \$3.00 per ton.
- e) More private coal in Montana. Royalties expected to go up and not deductible. Federal royalties are deductible in both states.
- f) Rail competition means 1 to 3 mills per mile cheaper freight from Wyoming.

3. YET, WE STILL UNDERSSELL WYOMING IN 9 OUT OF 10 COMMON

BURNSITES WHERE BOTH MONTANA & WYOMING COAL IS SHIPPED.
(Measured by BTU per pound delivered.)

--Montana is 280 miles closer to Minneapolis (NSP),
which is \$5.04 savings at \$.018 per ton mile.

--Average coal tax last quarter was \$2.88 total.

4. MONTANA HAS MORE NEW CONTRACTS SINCE THE COAL TAX THAN
BEFORE (7 OUT OF 13 CONTRACTS SINCE 1975 OR 53.8%)

--57.9% of total annual coal shipments contracted for
have been contracted since 1975.

--Wyoming has only 52% since 1975 (37.6% of their
annual coal shipments).

--The largest contract in the history of the world was
in Montana since 1975.

--Two new contracts -- Colstrip 4 and Bellriver -- have
just been entered into -- not yet producing. This will
add about 9,000,000 tons annually.

5. THE REAL PROBLEM IS THE SLUMP IN THE COAL MARKET.

--World-wide problem.

--Pennsylvania, West Virginia, Illinois, Ohio --
massive unemployment for last 8 years. Montana has
actually increased slightly.

--Midwestern Utilities (our prime market) overbuilt
based on grossly overstated energy forecasts.

--Generally no new contracts will be signed until
a new plant is built, then one contract for 20
years.

--Coal conversion mandated by Energy Policy Act of 1978
never took place.

--This situation is expected to change starting in
1995.

--Energy supply will again become short.

6. WYOMING WILL PROBABLY MATCH US DOLLAR FOR DOLLAR IN
REDUCTION OF COAL TAX.

--Heavy Republican House and Senate is ready to
introduce the bill.

--Waiting to see Montana's reaction.

--Governor's proposed credit (window of opportunity) will probably be seen as a reduction from 30% to 20% (details will be lost in translation)

7. BURLINGTON NORTHERN WILL PICK UP 95% OF ANY REDUCTION WE GIVE.

--BN has enormous stake in Montana coal shipping.

--They can't afford to lose this freight income.

--Either with or without the tax reduction, they will come in and bid a long-term freight contract (permissible under the Staggers Act) at just a fraction of a cent per ton under Wyoming bid to save the freight for their Montana line.

--Whether our tax is \$3.00 per ton or \$2.00 per ton, BN will bid just enough less to get the contract.

--They would like to get \$14.00 per ton to Minneapolis but they could come down to \$12.35 per ton and still be higher per ton mile than Chicago Northwestern, which serves Gillette, Wyoming.

- If BN matched their competition (Chicago NW) at \$.0154 per ton mile, they would reduce the delivered price per ton by \$2.08 or twice the savings of the Governor's proposal.

8. TO SUGGEST ANY REDUCTION NOW SUGGESTS THE COAL COMPANY ARGUMENTS ARE VALID, WHEN THEY ARE NOT.

9. ONCE THE COAL COMPANIES GET A REDUCTION TO 20%, WE WILL NEVER GET IT BACK UP TO 30%.

--If the coal companies do get more contracts, they will argue we have to extend the deadline because it worked. We won't be able to stop them.

--If the coal companies don't get more contracts, they will argue that they need more time to let it work. We won't be able to stop them.

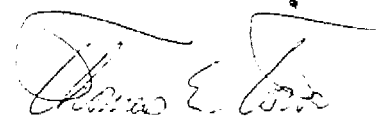
--The time will expire on July 1, 1987. This means an extension will be the big issue of the 1986 election

campaign. Big business PACs will swamp the next election with the request that the "window of opportunity" be extended -- whether we get new contracts (the coal companies put up) or not (the coal companies need more time).

--Finally, the coal companies will ask to move old contracts down to 20% because it is discriminatory to leave some at 20% and some at 30%.

--The amendment to reduce lignite to 20% was passed in 1975 and we never were able to get it back up to 30% even though they never have obtained any contracts or commenced any new production.

WHY ALLOW A FOOT IN THE DOOR WHEN WE DON'T NEED TO?

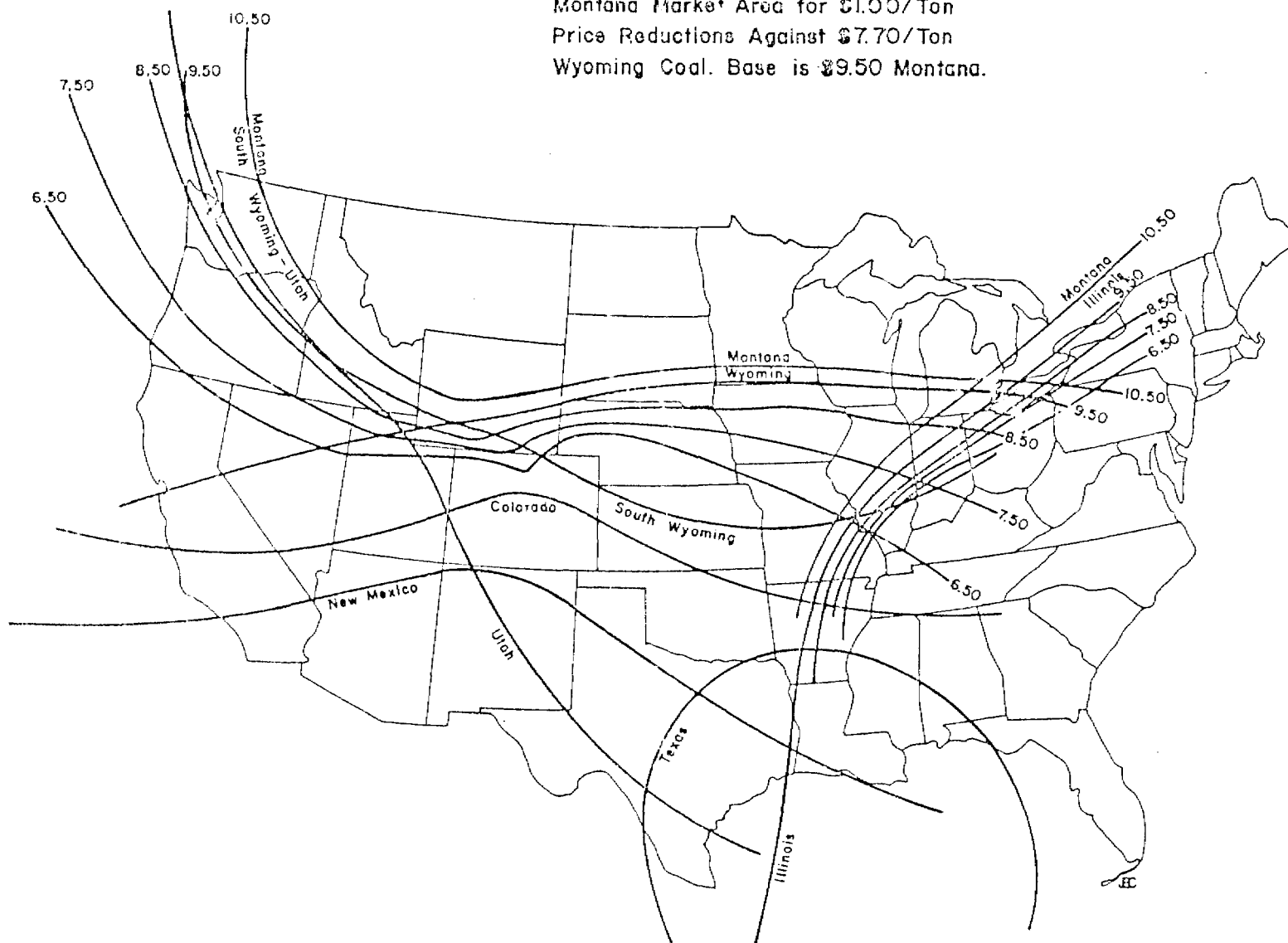


Thomas E. Towe

Exhibit 14
HB 602
2/14/85-
Towe

Figure C-2

Montana Market Area for \$1.00/Ton
Price Reductions Against \$7.70/Ton
Wyoming Coal. Base is \$9.50 Montana.

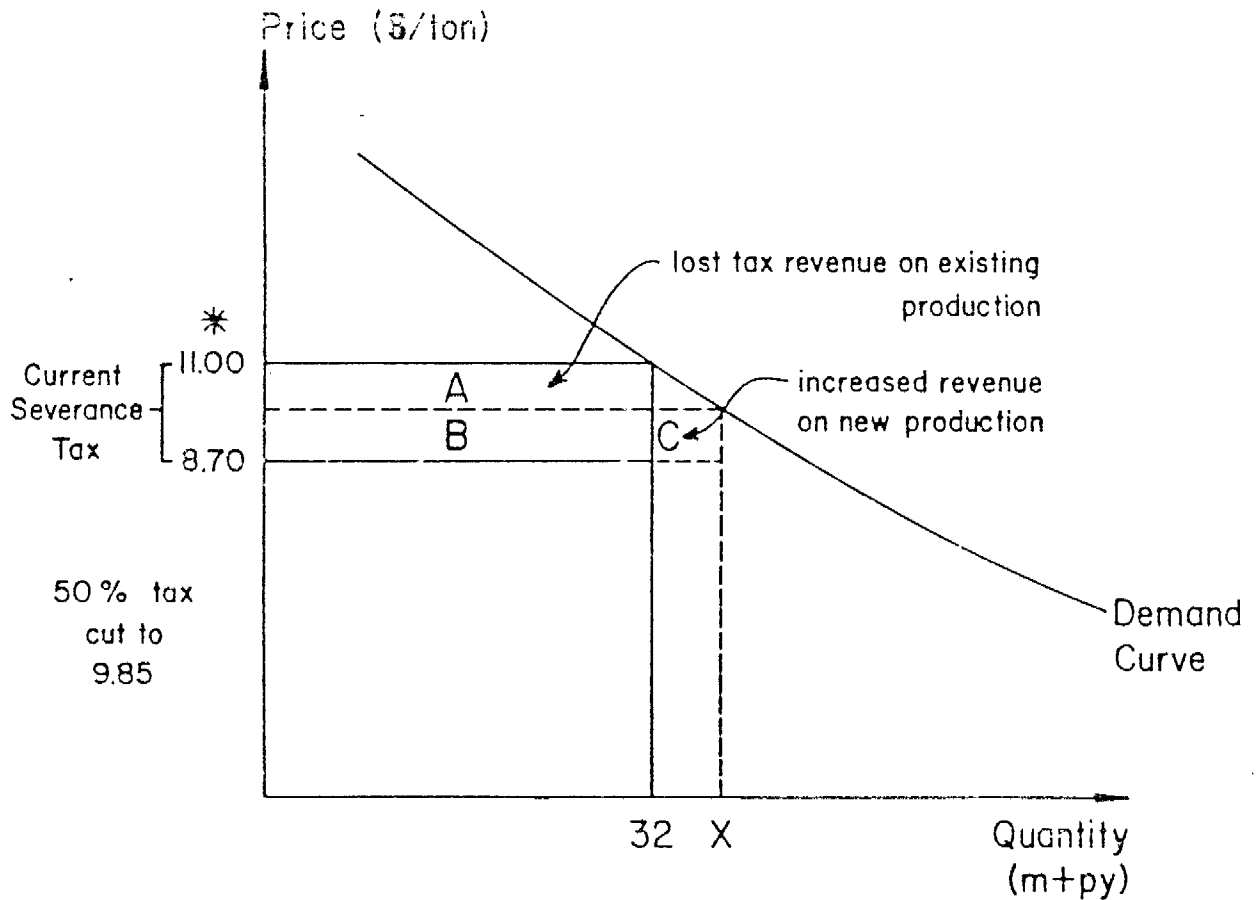


C-4

SENATOR 15
 HB 607
 2/14/85
 Towe

Figure S-3

Effect of a Tax Decrease on Production and Revenue



A + B = current revenue.

A = lost revenue under tax reduction.

C = revenue on new production.

C - A = net change in tax revenue.

Issue: X = new production level (elasticity of demand)

* Average price of 8700 BTU producers, for example.

~47001716
HB 607
2/14/85
Towe

Thomas E. Towe
Senate Dist. 46
13 February 1985

IMPACT OF MONTANA'S COAL TAX

Delivered price of coal -- to Minneapolis, Minn.

Freight (BN Railroad)	\$13.60	-	57.62%
Mine Price of Coal	10.00	-	42.37%
Severance Tax	2.16	-	9.15%
Coal Co. Profit (M. White)	1.72	-	7.29%
Coal Co. Profit (FERC)	2.40	-	10.20%
Reduction Under HB 607	.72	-	3.05%

Reduction of Coal Tax Under HB 607 - 72 cents

Reduction of Freight Rates by BN from

1.7 cents to 1.6 cents per ton mile - 79 cents

(Chicago Northwestern is at - 1.54 cents
per ton mile)

Montana Mine

Delivered Price of Coal to Minneapolis, Minn.*

Mining expense	\$2.50	
Reclamation expense	.60	
Royalty expense	1.25	
Depreciation	.61	
Production taxes (at \$10.00 per ton)	3.14	(State-\$2.21, Fed.- \$.50, & local taxes-\$.43)
Real Estate Taxes	.03	
Administration & General	.15	

Total Mining Costs	\$8.28	
Profit	1.72	
Total Mine Price	\$10.00	
Freight at 1.7 cents per ton mile**	13.60	(800 miles)

Total Price Delivered	\$23.60	

Wyoming Mine

Montana Price	\$10.00 per ton	
Less small production cost***	1.81	} \$3.26 1/2 less
Less smaller tax	1.08	
Less smaller royalty	.375	

Wyoming Price	6.74	
Freight at 1.7 cents per ton mile	18.36	(1,080 miles)

Total Price Delivered	\$25.10	

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Therefore -- to compete -- Wyoming Mine has to sell:

\$25.10	Wyo. price delivered
\$23.60	Mont. Price delivered

\$ 1.50	Price advantage for Montana.

	\$6.74	Wyoming mine price
less	1.50	difference

	\$5.24	Price for Wyoming to compete

But if Montana reduced price by \$1.50 to \$8.50 per ton
(80 cents profit instead of \$1.72)

-	\$5.24	Price for Wyo. to compete at \$10.00 Mont. coal
-	1.50	Further reduction

	\$3.74	Price for Wyo. to compete at \$8.50 Mont. coal

LOSS OF REVENUE TO MONTANA

Sherco #3 Contract:

\$1.5 million to 2.5 million tons per year
x 20 years

30 million tons
x 72 cents (tax reduction under HB 607)

\$21.6 million loss

But with Sherco #3 contract, the coal companies will
say -- "We put up, now keep faith and reduce all tax to
20%."

\$112,000,000	(tax projected for FY '87)
x 33 1/3%	

\$ 37,329,600	loss per year
x 20	years (with no increase
-----	in production)
\$746.6 million	loss

Also what is to stop BN Railroad from increasing freight
rates to 1.79 cents per ton mile from 1.70 cents per ton
mile (5.3% rate increase)

--.09 cents per ton mile = <u>72 cents</u> extra cost of delivered coal	
--33 1/3 % credit on coal tax (HB 607) = <u>72 cents</u> less cost of delivered coal	

* All figures but freight from Marty White, CEO, Western
Energy, Butte Symposium, 22 Sept. 84

** Freight from John Hertog, 31 Jan. 85, Helena, Mont.

*** From James Murphy, Market Dept. Western Energy, Butte
Symposium, 21 Sept. 84

Sherlee Graybill
Great Falls, Mont.
Taxation Comm. 2/14/85

Exhibit 17
HB 607
2/14/85

I have come here today to encourage careful investigation of of the Governor's plan to lower the coal severance tax by 1/3 for coal sold during the next two years.

The proposal came upon us quickly and in our haste to learn its provisions and understand its effects, I believe we risk forgetting the original reasons for passing the 30% coal tax several years ago.

If pressed I know that anyone on the Natural Resources Committee could certainly list the reasons for the 30% coal tax pretty thoroughly—but I wonder if in our hurry to review the Governor's proposal, have we made enough effort to reflect on the fundamental rationale for the original tax?

The tax was created because we in Montana decided to take control of our future--and not leave it in the hands of corporations and out-of-state interests.

But what gave us the right to do that?

I want to suggest two reasons for that right.

First, we live here. We bring up our children here. We try to ensure that life here for us and our children is a good life. To do that we must always legislate with foresight. The policies we adopt in this state should not be stopgap measures. The coal tax was not designed to help the coal industry. Montana's coal tax is for Montana's benefit. The coal tax was broadly conceived; it was designed with regard for the future.

It would be a/shame if the tax were suddenly changed because of the vagaries of the present coal market, and a desire to make a quick profit.

Perhaps the new proposal's rationale goes deeper than this, but that needs to be proven before we lower the coal tax hastily. We should not risk waiting to find out if the proposal's logic is sound after we have lowered the tax.

The second reason we had the right to adopt a 30% coal tax is because Montana coal is part of Montana. Once it is gone--it is gone for good. We have an abundant supply--but there is not an inexhaustible supply of economically minable coal. It is our responsibility to see that Montana's reasources

are managed so that Montana realizes the most good from them, for as long as the coal lasts.

The 30% tax was structured to make sure that we get a fair price for coal taken out--at the same time protecting the coal from those who would exploit it.

When our coal is gone will we be able to say that Montana benefited from the way we, who sit here today, managed that coal resource?

SUMMARY

#1 The 30% tax should not be sacrificed for relief from temporary market conditions. That would be short-sighted. The tax must be oriented toward the future.

#2 We must manage our nonrenewable resources in order to maximize the benefit for Montana's future generations.

#3 Perhaps this new proposal does look to the future. But I am not yet confident that it does. I wonder how many Montana law-makers can say that they are confident of the proposal's long term logic?

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*Exhibit 18
HB 608
2/14/85
Powell, Keith*

Testimony of Keith Powell, Chairman
Northern Plains Resource Council
Feb. 14, 1985
House Taxation Committee - HB607

Ten years ago the 1975 Legislature created the 30% Coal Severance Tax. These legislators believed that while some part of Montana's wealth, from non-renewable resources was being removed from the state, that it would be prudent for the state to build a trust fund. This fund would continue to benefit the state long after the coal marketing had ended. These legislators also believed, in 1975, that some funds to ease the tailend impacts were also going to be needed. They were proven right a few years later when Atlantic Richfield closed down, and there were no tailend funds.

Now this 1985 legislative session is to consider lowering the 30% coal severance tax by one third. (Temporarily they say). The purpose we are told is to make Montana's coal more competitive to capture any possible new coal contracts.

We should be aware that at present, Montana coal under sells Wyoming coal in 9 out of 10 common burnsites on a B T U basis.

It is true that the coal market is depressed and for several reasons; the severance tax not being significant. Crude oil prices have declined. Also a large area of the country is bulging with excess electricity, (Basin Electric, Montana Power, Laramie River Station in Wheatland, Wyo. and the Pacific North West with it's excess power, and yet the mothballed atomic plants).

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There is an excess of generating capacity, and the possibility of several new coal contracts is remote. The one likely new contract, for a Minnesota power plant, could be served by Montana mines significantly cheaper than by Wyoming coal even with the 30% severance tax.

According to the Montana Dept. of Revenue the effective rate of Montana's coal severance tax at present is 20.8% and will drop to 18.5% in the fall of 1987, when the royalty deduction provisions, passed in 1983, are phased in.

I believe that the present legislature has been quite protective of its revenue measures, and rightly so. To approve a further cut in the coal severance tax would be costly to the State Treasury and could be disastrous in the long run.

Do we want to initiate a price war with Wyoming? They have more excess mining capacity than Montana. Some OPEC countries have had some experience at this.

Are we sure we could close the window? Or would the window be used to open the door?

This appears to be special interest legislation at the expense of Montana people. I believe the severance tax should be left alone.

The cost of freight is approximately 60% of the cost of delivered coal. Perhaps the spread between Burlington Northern's rates and those of Chicago North Western might be a better place to do some trimming.

Thank you.

EXHIBIT 17
HB 509
2/14/85
Best

MONTANA'S 30% COAL SEVERANCE TAX: A LOOK BACK

Montana's 30% severance tax on coal has been attacked by utilities and mining companies, and defended by public officials and Montana citizens generally, since its passage during the 1975 legislature.

One way to put the present debate into perspective is to look at what has been said about the tax since its passage. Here are some quotes from those most involved in the debate over Montana's coal severance tax--a debate that has raged in the Montana legislature, in the U.S. Congress, and in the judicial system, all the way up to the U.S. Supreme Court.

We start with a look back to 1973, when the Montana legislature was considering a bill to raise the "Strip Mine License Tax" on coal to a mere 40 cents per ton. Here is what the Decker Coal Company had to say about "H.B. 509":

An increase in the coal mining license tax is a further severe impediment to, if not a complete suspension of, the orderly development of the Montana coal industry...The percentage increases imposed and presently proposed, all within a three-year period, are a tremendous burden...Such increases would be understandable were the initial rates unreasonably low or in a non-competitive market. Such is not the case here. The base rate of 5 cents per ton taxation from 1921 to 1971 is substantially higher than the tax of our major competitive state.

...The increased tax does not improve the possibility of obtaining new contracts and continuing, at the expiration of its current contract, its contribution to Montana's economy.

There are those who would prefer no mining. They may well have accomplished their purpose if HB 509 is passed.

Despite Decker's testimony, HB 509 was passed. Shortly thereafter, Decker entered into a 180 million ton, six year contract with Commonwealth Edison of Chicago; Westmoreland prepared to open a new mine to produce four million tons per year; and Western Energy opened up a new mine.

In 1975, the legislature passed Senator Tom Towe's SB 13, the 30% coal severance tax after Towe told his fellow legislators:

The history of coal mining in the state is that wealth in coal is not in prosperous communities. Coal is known for two things, coal and poverty. Coal hasn't paid its fair share in other parts of the country. But I won't let it happen in Montana. We need the revenue: The social impact of coal development is being felt by taxpayers, ranchers and farmers in Rosebud County. Colstrip needs more schools and roads. What will happen 30 years from now when the coal is gone? Will we have a large hole in the ground like in Butte?

The following year, the people of the State of Montana overwhelmingly voted to put half of the revenues from the tax into a permanent trust fund for future generations. And the debate was on:

"The highest coal tax in the nation" is what both proponents and critics are calling Montana's new dual severance tax on coal.

The critics claim it will cut production and development of this natural resource so abundant in Eastern Montana and send diggers to other states.

Proponents say that at long last Montana has learned that the people of the state have a stake in its natural resources...

What is especially significant in the legislative action is a changing attitude toward the ownership of natural resources.

Such resources, the state seems to be saying, no longer belong solely to the owners of the land over them or those who hold the mineral rights. They belong in some degree to all of the people of the state.

--Billings Gazette Editorial
April 24, 1975

Fears that Montana coal development will be stifled by the new state tax, the highest in the west, appear to be quite groundless.

The bill was hardly more than passed when Decker Coal Co. applied for permission to open a second strip mine

in Big Horn County and revealed plans to expand another...

...Even though the profits may not be quite as high, they will be substantial and the state of Montana will not be left with empty pockets to regretfully gaze at holes in the ground.

--Billings Gazette Editorial
May 1, 1975

Soon after the tax was passed, the major coal and utility companies began efforts to undo the tax on two fronts--in the courts, and in the Congress. Newspapers, state officials, and Montana's Congressmen and Senators in Washington decried these efforts and defended the 30% coal severance tax:

Montana should not stand by wringing its hands as the large coal and power companies try to knock out the state's severance tax on a nonrenewable resource...

...[I]t really isn't a matter of the amount of the severance tax that nettles the giants attacking Montana's 30% severance tax. They just don't like any severance tax on what use to be theirs for the taking...

No, we don't think Montana should have an anti-business climate. Neither should it be expected to wag its tail for grudgingly given handouts from the exploiters.

--Billings Gazette Editorial
January 4, 1978

I will not sit by and let the coal barons try to do to Montana what the copper barons did in the past. Eastern Montana has the largest coal reserves in the world, but once that coal is gone life must go on...I will not allow Eastern Montana to be turned upside down without proper reclamation and present and future benefits to offset social and economic impacts...

It is becoming increasingly obvious to me that coal and energy interests from outside Montana want the coal and water without regard for the future of Montana.

--Congressman Ron Marlenee
January 4, 1978

After District Judge Peter Meloy rejected the coal and utility companies' suit to overturn the tax in late 1979, public

officials were elated:

Montana will never again roll over and play dead when big outside interests decide to take our resources.

--Attorney General Mike Greeley

I'm delighted and relieved.

--Lieutenant-Governor Ted Schwinden.

The Montana Supreme Court upheld Judge Meloy's decision in July of 1980:

Montana has been painfully educated about the extreme economic jolts that follow when the mine runs out, the oil depletes or the timber saws come still.

We have a good many examples that teach us what happens to our hills when the riches of our Treasure State are spent.

From the Supreme Court's opinion,
Judge Sheehy

The Justice's opinion was based on Montana's history, but it was prophetic as well. Just three months later, thousands of workers were laid off in Butte, Anaconda, and Great Falls:

If there is a living soul in Montana who still opposes the state's coal severance tax, let them mount a soap box in the center of Anaconda, Butte or Great Falls and give us the benefit of their wisdom...

...if there lives a Montanan brave enough to say this state should not bank some of the money ripped from our soil to prepare for the day when the industry abandons us, let him speak his piece today.

Let him tell it to the 1,500 smelter and refinery workers in Anaconda and Great Falls. Let him expound his theories of development before the merchants who depended upon the payroll that vanished after 78 years.

--Billings Gazette Editorial
October 2, 1980

The severance tax was upheld by the U.S. Supreme Court, and efforts to limit the tax through Congressional action repeatedly failed. But the coal and utility companies' assaults never stopped.

The tax has been criticized as being repressive to the mining industry in this state, and a boon to nearby states where taxes are minuscule by comparison.

Those who favor a lower tax contend the mining industry would grow and blossom if the burden were reduced.

Those who favor keeping it at its present 30 percent level see little to substantiate the arguments of the mining industry and its supporters.

They look beyond the immediate short-term benefits and see the need to alleviate the impact on communities that would experience growth at a rate beyond their capacity to deal with it.

And they see the need to provide future generations with something more than a series of Berkeley-like pits dotting the countryside.

The 30-percent severance tax is not too high a price for companies to pay for Montana's coal.

Better that they pay now than that we pay later.

--Billings Gazette Editorial
November 30, 1983

The Schwinden Administration led the defense of the tax:

Many factors threaten the viability of Montana's coal industry. Focusing on the coal severance tax as the cause of the coal industry's woes is like falling for the magician's slight of hand. The coal severance tax debate distracts us from the real culprits like transportation costs and acid rain containment. It is time for coal producers, their utility customers, other industry groups and state government to end this senseless and costly rhetorical battle about the rate of the severance tax.

--Governor Ted Schwinden,
to the Coal Tax Oversight Committee
January, 1984

The Governor's position was reiterated to the Coal Tax Oversight Committee in June of 1984. Studies for that Committee and for Governor Schwinden's Council on Economic Development confirmed that even drastic reductions in the coal severance tax

would not have a significant impact on Montana coal production, and that the most important variable in the marketability of Montana coal was transportation cost.

Yet the debate raged on, and the coal severance tax became a major campaign issue:

We supply a lot of coal, but we're not dominated by the coal industry. We have put the coal industry in its proper perspective, and now is not the time to lose that perspective.

Why should we now believe those who say that we made the tax too high? Let's not turn our backs on our average taxpayers in order to pad the profit margins of out-of-state corporations.

We don't want to become known first and foremost for our coal production. We want to continue to be known for the quality of Montana life, for our clear skies and streams, for our ability to face the future on our own terms.

--Attorney General Mike Greeley
Billings; September 25, 1984

Some Montanans have argued that reducing our coal severance tax is the only way to increase coal production...However, our production taxes comprise only a small portion of the delivered price of coal.

Those who argue that tax reductions are the only cure for the Montana coal industry should keep in mind that the 1983 Legislature reduced the effective rate of the coal tax by an estimated \$20 million over five years.

Instead of shadowboxing with the specter of production taxes, we must directly confront the real obstacle to increased coal production--transportation costs...

I do not believe the public interest would be served if we reduced our severance tax and the lost revenue was transferred into Burlington Northern's bank account in the form of increased rail rates.

Governor Ted Schwinden,
Billings Gazette Guest Column
October 14, 1984

The Bozeman Environmental Information Center

• P.O. Box 3865, Bozeman, Montana 59715

TESTIMONY IN OPPOSITION
TO HB607
Feb. 14, 1985

Exhibit 20
HB 607
2/14/85
Calvert, Jerry

Good morning, Mr. Chair, and members of the committee. My name is Jerry Calvert. I am speaking on behalf of the Bozeman Environmental Information Center. Bozeman EIC is an affiliate of the Montana EIC. I serve on the board of directors of both organizations. Bozeman EIC recommends that you give HB 607 a "do not pass" recommendation.

We believe in and support the reasoning behind the coal severance tax. We believe that the tax represents sound public policy and that any attempt to "temporarily" reduce the tax rate for new coal contracts ignores the purposes for which the tax was created in the first place.

The purpose of the tax is to insure that there will be money available to pay for the real environmental and social costs which resource development inevitably brings, and secondly, to provide for a trust fund for future generations once this non-renewable resource is depleted or replaced by other energy sources.

As you know the coal tax rate varies from 20 to 30% of the contract sales price for surface-mined coal, the percentage tax rate being determined by the coal's heating content. Most coal mined in Montana now is 30% coal. But the nominal rate of 30% is reduced by various deductions to an effective rate of 20.8% and it will drop further to 18.5% in the fall of 1987 when new royalty deduction provisions become fully phased in.

In 1984 the coal tax generated \$82.8 million in revenue. During this fiscal year an estimated \$85.9 million is expected, in 1986 \$103.9, and in 1987 \$112 million.

Fifty percent of the revenue is earmarked for the trust fund. The major portion of the trust fund is invested by the Board of Investment and earned a 13% rate of return last year. The remaining 50% of the coal tax proceeds is spent as follows--19% to the general fund, 10% to the education trust fund, 8.75% for park acquisition, and 2.25 % for alternative energy research. Smaller percentages are allocated to other programs including county land use planning and renewable resource research.

To understand the reasons behind imposing a 30% rate on strip-mined coal we have to look at the history of our "Treasure State". Between 1863 and 1981 Montana

produced $8\frac{1}{2}$ million tons of copper, 11.7 million troy ounces of gold, 885.6 million troy ounces of silver, and 300 million tons of coal.

Most of the wealth generated by the depletion of these natural resources flowed out of state. Montana's wealth helped fund the Los Angeles Symphony, the Stanford University Library, the Corcoran Art Gallery in Washington, D.C., and the University of Virginia Law School. The Billings Gazette in an editorial on November 30, 1983 evinced a clear understanding of what had happened and said of those who have defended the tax:

They look beyond the immediate short-term benefits and see the need to alleviate the impact on communities that would experience growth at a rate beyond their capacity to deal with it.

And they see the need to provide future generations with something more than a series of Berkeley-like pits dotting the countryside.

The 30-percent severance tax is not too high a price for companies to pay for Montana's coal.

Better that they pay now than we pay later.

In short, Mr. Clark got wealthy and got elected to the U.S. Senate. Stanford got a library, and Butte got the shaft. We don't want to see that happen. We don't want to see again a situation where mining companies don't pay their fair share. Montana got little for its resources in the old days. The reason, well documented in our history books, is that the mining companies had the political power to insure that they were taxed very little. We don't want to go back to those bad old days, and temporarily reducing the tax is the first big step in that direction.

Given the clearly-articulated reasoning behind the tax, we (and I am sure you were) were greatly surprised by Governor Ted Schwinden's suggestion that the tax be reduced. The Governor seems to have forgotten, at least temporarily, what the tax is all about. In October, 1981, in testimony before the Energy and Commerce Subcommittee of the U.S. House of Representatives the Governor was quoted as saying: "For a century industrial interests from outside Montana have come into our state, taken the treasure and gone away. They left behind no jobs, no real industrial base, no pathway to a better future They left little behind in Montana but scarred earth." In defense of our tax then, the Governor said it's purpose was "to save something for our children".

Now it seems the governor has changed his mind. We urge ^{you} to examine closely the merits of the argument. If you do you will come to see that the reasoning behind this ill-conceived proposal is flawed in several respects as already alluded to here today.

First, there is little evidence that the temporary reduction will cause a significant increase in new coal contracts for Montana mines. Speaking with editors of the Missoulian on January 24 the Governor admitted that he had no evidence the his proposed reduction would generate new production (A.P. story in the Bozeman Chronicle 1/25/85). In that same briefing, the Governor acknowledged, as he must, that transportation costs were the major factor in the delivered price of Montana's coal as well he should have. Every piece of published evidence that I have seen over the past several years confirms the Governor's observation.

For example, in the booklet State Tax Fairness, a defense of the coal tax published by the state in 1982, figures for 1980 show that the coal tax on average accounted for 9.5% of the delivered price while railroad hauling charges accounted for an average of 54.9% of the delivered price. In our judgement a significant lowering in railroad freight rates would do more to encourage mining, but B.N. has already said that it does not intend to do so. In this regard I urge the committee to carefully read the just released study "Montana Coal Market To the Year 2000" by Duffield, Silverman, and Arnold whose analysis suggests that even a 50% reduction in the tax will have little impact in encouraging new mining given the current softness of Montana's northern midwestern market. In a word, the overwhelming evidence suggests that the temporary reduction proposed in this bill will not have its intended consequences. But there will be other consequences that the committee should consider should this bill become law.

First, We believe that even a "temporary" tax reduction will set in motion growing pressure to permanently reduce the tax regardless what happens between now and June, 1987. If even one new contract is signed during this so-called "window of opportunity" those who want a permanent reduction will argue that they now have "proof" that the tax was too high as they have been alleging since 1975. On the other hand, if nothing happens, which is likely to be the case, they will say that more time is needed, that the market has been soft, that transportation costs are too high, etc, therefore please keep and extend the temporary reduction.

Second, we are convinced that the proposed reduction will seriously undercut the defense of the coal tax that we have been making before the U.S. Congress where efforts continue to be made to mandate a Federal coal severance tax standard which states may not exceed. So far these Congressional attempts to reduce the coal tax under the doctrine of Federal Preemption have failed. They have failed because our argument that the tax is fair and just have been persuasive. They will be less so if the tax is now reduced. We will give aid and comfort to those who want to reduce the tax and we will demonstrate the allegations that we are the "greedy" "blue-eyed Arabs" of eastern Congressional imagination.

In summation the legislature in 1975 made a wise choice based upon a clear understanding of our past and a sensitive forecast of our probable future. You have before you perhaps the most important piece of legislation in this session. Look at very closely. Look carefully at all the testimony that has been given. Put this bill to sleep. Thank you, Mr. Chairman, and the members of the committee.

WITNESS STATEMENT

EXHIBIT 21
HB 607
2/14/85
Farris, Carol

NAME Carol Farris BILL NO. 607
ADDRESS 114 22nd St E Great Falls 59405 DATE 2-14-85
WHOM DO YOU REPRESENT? Montana State Democratic Womens Clubs
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

MSDWC opposes lowering the coal severance tax.
At a time of decreased revenues to the state through regressive
Federal policy, it makes no sense to give a tax break to
others at the expense of Montanans. The Coal Severance Tax
is the only tax Montana Dept of Revenue collects ^{primarily} from
non-residents. Reducing the Coal Severance Tax for outsiders
will mean Montana tax payers will either have to pay more
themselves or be content with less. Consequently, a reduction
in the Coal Severance Tax amounts to an increased burden
for Montana tax payers.

Instead of sending valentines to the Midwest, the Committee
on Taxation needs to keep consideration focused at home in
Montana.

EXHIBIT 22
HB 607
2/14/85
Reed, Don

TESTIMONY IN OPPOSITION TO HB 607

By Don Reed, Montana Environmental Information Center

February 14, 1985

Mr. Chairman and members of the House Taxation Committee, I'm Don Reed and I'm here on behalf of the members of the Montana Environmental Information Center in opposition to HB 607.

The Montana EIC does not believe that the coal tax rebate incentive is wise policy for the state of Montana. One of the most important reasons for this is the degree to which HB 607 appears to be in direct reaction to threats from corporations outside of Montana. In particular, The Northern States Power Company (NSP), a Minnesota utility, has threatened to take its future coal contracts elsewhere if Montana does not lower its coal tax.

NSP currently buys Montana coal. Minnesota is historically a market for Montana coal. NSP has not yet signed a contract for coal to fire its Sherco #3, scheduled for late 1987 or 1988. NSP may also be looking for coal for another plant, Wisconsin Coal #1 in 1993. According to Silverman & Duffield, these combined contracts would total about four million tons of coal annually.

Even without reductions in the coal tax, Montana coal is able to compete well with Wyoming coal for the Sherco #3 plant. Again according to Silverman & Duffield, even assuming a low Wyoming bid and an average Montana bid, Montana coal has a \$1.08 a ton advantage. With more realistic assumptions about Wyoming

coal bids, the Montana advantage is \$2.08 a ton. With the original assumptions, that cost difference would mean \$2 million annually or \$60 million over the life of the plant.

The Sherco contract may well be a contract at the margin for which a coal tax reduction might make a difference. It is also quite possible that the tax will not make a difference for the Sherco contract.

At first blush, it appears that it is in NSP's best interests to buy Montana coal. So why is NSP threatening to go elsewhere for its coal? The answer is not mysterious. NSP would like to get the lowest possible price it can. Wyoming may not offer a better economic deal than Montana coal with the existing severance tax. Montana coal with a lower severance tax, however, does offer a better deal than Montana coal with a reduced severance tax.

In short, NSP is using its position of control to threaten Montana with failing to get the Sherco contract. NSP is also threatening its own consumers with unnecessarily higher prices for electricity.

That kind of bold corporate threat was once common in Montana. What should our reaction be today in light of our history of domination from outside corporate interests?

Montana EIC believes that HB 607 would set a bad precedent of our state legislature rolling over to a single corporate interest. If an out-of-state utility is willing to threaten its own consumers with higher costs in order to make political

hay, that is the business of Minnesota consumers. Our business is to respond soundly to the threat with a "No, we won't succumb to your threat. If you are foolish enough to walk away from the best economic deal for political reasons, that is your problem."

In summary, Montana EIC believes that HB 607 represents special interest legislation of the worst kind. It is targeted at a single purchaser who has threatened to go against its own economic special interest for political purposes.

We urge you to vote "Do Not Pass" on HB 607.

Thank you for this opportunity to comment.



JAMES W. MURRY
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59624
406/442-1708

Exhibit 23
HB 607
2/14/85
Murry, James

TESTIMONY OF JIM MURRY ON HOUSE BILL 607 BEFORE THE HOUSE TAXATION COMMITTEE,
FEBRUARY 14, 1985

I am Jim Murry, representing the Montana State AFL-CIO. I am here to voice our opposition to passage of House Bill 607.

The Montana labor movement has been supportive of Montana's progressive coal severance tax since the debate on this issue first began. Union members have passed resolutions in Montana State AFL-CIO conventions favoring this tax since the early 1970s.

Five out of nine resolutions passed supporting the coal severance tax by Montana organized workers over the last ten years have been submitted by various building trades organizations.

We have consistently believed that an investment must be made by those who have profitted so highly from the extraction of a non-renewable resource. That investment has been required by state lawmakers in the form of the most farsighted and progressive tax on natural resources in the nation. Requirements were set which guarantee that these dollars will be fed back into the state's economy. All Montana citizens, now and in the future, are to benefit from the revenue generated by our coal severance tax.

Trade unionists recognized the value and deep need for this kind of insurance for Montana's future back in 1974 when delegates to the Montana State AFL-CIO convention passed a resolution which stated, in part: We support the taxing of Montana coal at a level "...sufficient to ensure that future generations of Montanans will also benefit from the disposal of a resource that is a part of their heritage." Over the years since that endorsement, Montana workers have on several occasions reaffirmed our support of the 30% coal severance tax.

Mr. Chairman, members of the committee, we maintain that the need is just as great today to make that investment in our future. The Montana State AFL-CIO is firmly on record in opposition to the tax give-away proposed by House Bill 607, and we ask your support for our position.



Exhibit 24
HB 607
2/14/85
Jewett

TESTIMONY

House Bill 607
2/14/85

Mr. Chairman, Members of the Committee. I am Tony Jewett, Executive Director of the Montana Democratic Party. The Democratic Party is in opposition to this legislation.

The decision that this committee will make on this bill is an historic decision and should not be viewed for anything less than the profound impact it will have on Montana and the shape of Montana's future for decades ahead. Your decision is not just yours; it is a community decision and the all the people of Montana are a part of that community.

Most of all, it is a decision that should be made based on the merits of the issue and the facts that support those merits.

The Democratic Party comes in opposition to this measure because we do not feel the facts of the case merit a reduction in the tax; we believe that 1) the tax is a minor factor in the delivered price of coal 2) that Montana coal has been proven to be more competitive in northern markets than that of our neighboring states 3) that much of Wyoming's competitiveness is based on low-production costs in comparison with Montana, primarily due to coal-seam size and depth 4) that production of coal is a function of demand, not the severance tax, and that production will not increase dramatically with a lowered severance tax, but will be subject to the demands of a slowly but steadily growing market, and that 5) the main culprit in the debate

Montana Democratic Central Committee • Steamboat Block, Room 306 • P.O. Box 802 • Helena, MT 59624 • (406) 442-9520

Executive Board						
Bruce Nelson Chairman	Donna Small Vice Chairman	Mary Hempleman Secretary	Bobbie Wolfe Treasurer	Tony Jewett Executive Director	James Pasma Nat'l Committeeman	Dorothy Bradley Nat'l Committeewoman
Phil Campbell	Helen Christensen	Virginia Egli	Wendy Fitzgerald	Chas Jenikor	Les Morse	Les Pallott
Sharon Peterson	Gracia Schall	Barb Skellon	Clara Spotted Elk	Chuck Tooley	Mike Ward	Blake Wordal
Sen. Chet Blaylock	Rep. Dan Kemmis	Jim Foley	Rep. John Vincent	Phillis Moore		

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over competitiveness of Montana coal is not the severance tax which adds less than 10% to the delivered cost of the coal, but Burlington Northern, whose monopolistic rail practices add over 50% to the delivered price and whose behavior is a gross insult to Montanans who depend on rail shipping for their livelihood.

It is because of those proven facts that we oppose this legislation.

But this legislation is not without merit, and the Democratic Party has struggled with one aspect of this issue from its beginning. That issue is the so-called "window of opportunity." The coal companies have put unrelenting pressure on Montana's elected officials to lower the tax.

The Governor's response has been this proposal, and the Democratic Party commends both the Governor and Rep. Quilici for this effort to call the coal companies' bluff.

Our fear is that a lowering of the severance tax now is a permanent lowering. If mining increases to even a minor degree during this period, the legislature will come under enormous pressure to extend the window. The Sherco contract will be signed this spring and will be used as living proof of the value of lowering the tax, when in fact the Sherco contract will go to Montana because Montana can deliver it much cheaper than Wyoming. If mining doesn't increase, coal producers will say that the window wasn't open long enough or the tax credit wasn't big enough, so extend it and lower it.

If anyone in this room believes this 'foot-in-the-door' philosophy is will not be at work, I would reference them to today's Great Falls Tribune where a spokesman for the Montana Coal Council is already saying that the Governor's proposal does not go far enough, and is advocating a longer and deeper reduction in the tax. The blood is on the table, and it is up to the legislature to control the flow.

Those considerations should not frame the discussion of the future of the tax. The merits and facts of the issue should.

With this in mind, the Democratic Party would offer to the committee an amendment to the legislation that would insure that the tax is debated from a rational rather than political and emotional ground.

We would ask the committee to add a section to the bill that places a constitutional referendum on the ballot. This referendum would, if passed by the people, would require a 2/3 vote of both chambers of the legislature to reduce the tax in the future. In doing so, the referendum would insure that the debate regarding the coal tax could not be controlled by partisanship, by interest group pressures, by industry pressures, or for political purposes. If the window is successful, it would be extended, and if not, it would not be extended. But the issue would be decided on the best interests of Montanans and on a factual basis. It would insure that the so-called window of opportunity is in fact a window, and not a floodgate. And it would insure that the coal companies would have to live up to the challenge given them, to 'put-up or shut-up' in their talk about the severance tax and its relation to production of coal in Montana.

EXHIBIT 25-2

HB 607

2/14/85

Duffield

MONTANA COAL MARKET TO THE YEAR 2000:
IMPACT OF SEVERANCE TAX, AIR POLLUTION CONTROL
AND RECLAMATION COSTS

by

Professor John Duffield
Department of Economics
University of Montana

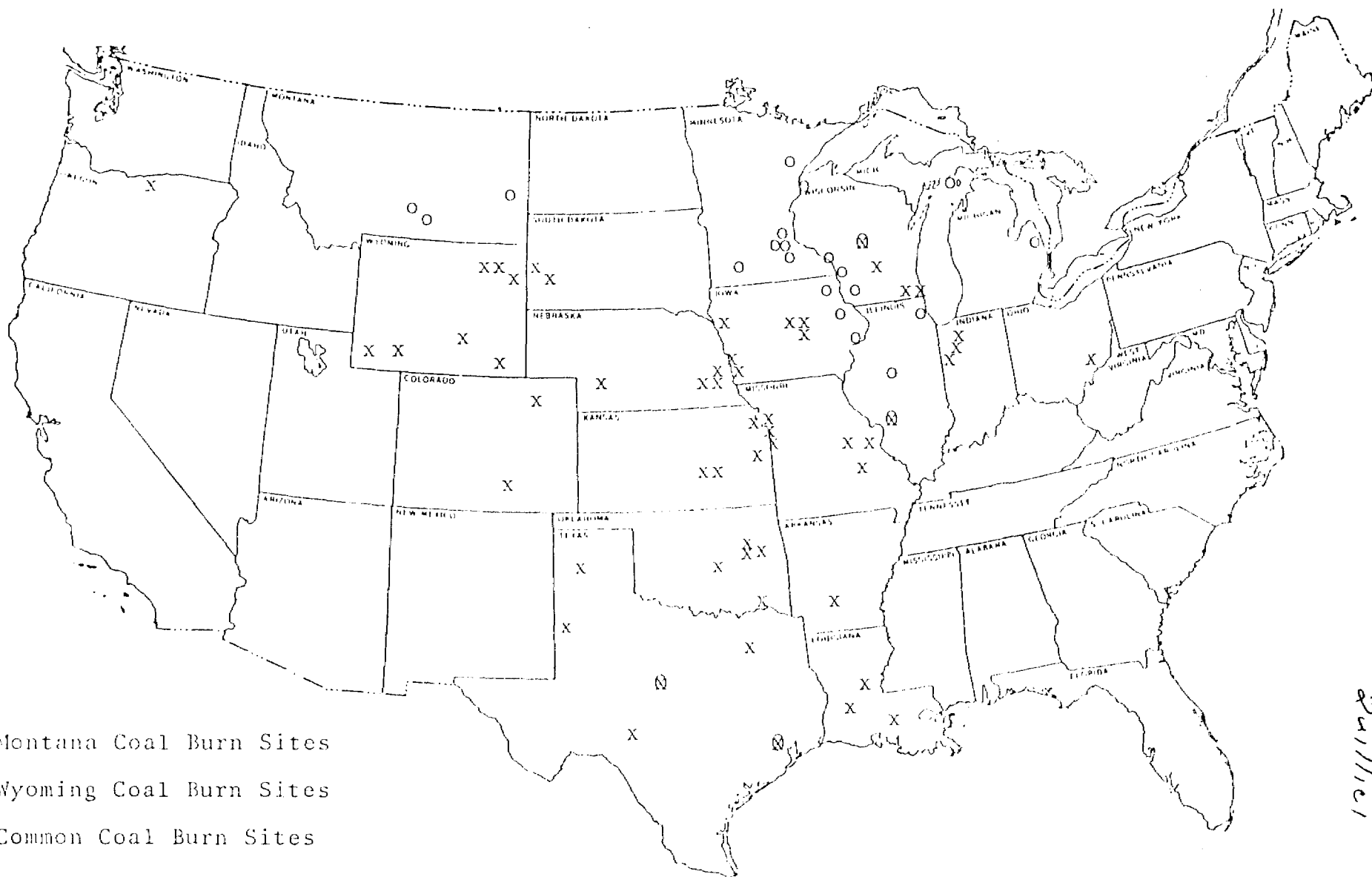
Professor Arnold Silverman
Department of Geology
University of Montana

John Tubbs
Department of Economics
University of Montana

Prepared for the
Montana Department of Commerce
Helena, Montana

January, 1985

Mon /Wyoming market areas: traditionally Montana's coal market area has been the North tier of states (Minnesota, Wisconsin, Michigan and Illinois). While Wyoming's market has been the south-central states (Oklahoma, Arkansas, Kansas, Missouri, Iowa) and Wyoming burn sites.

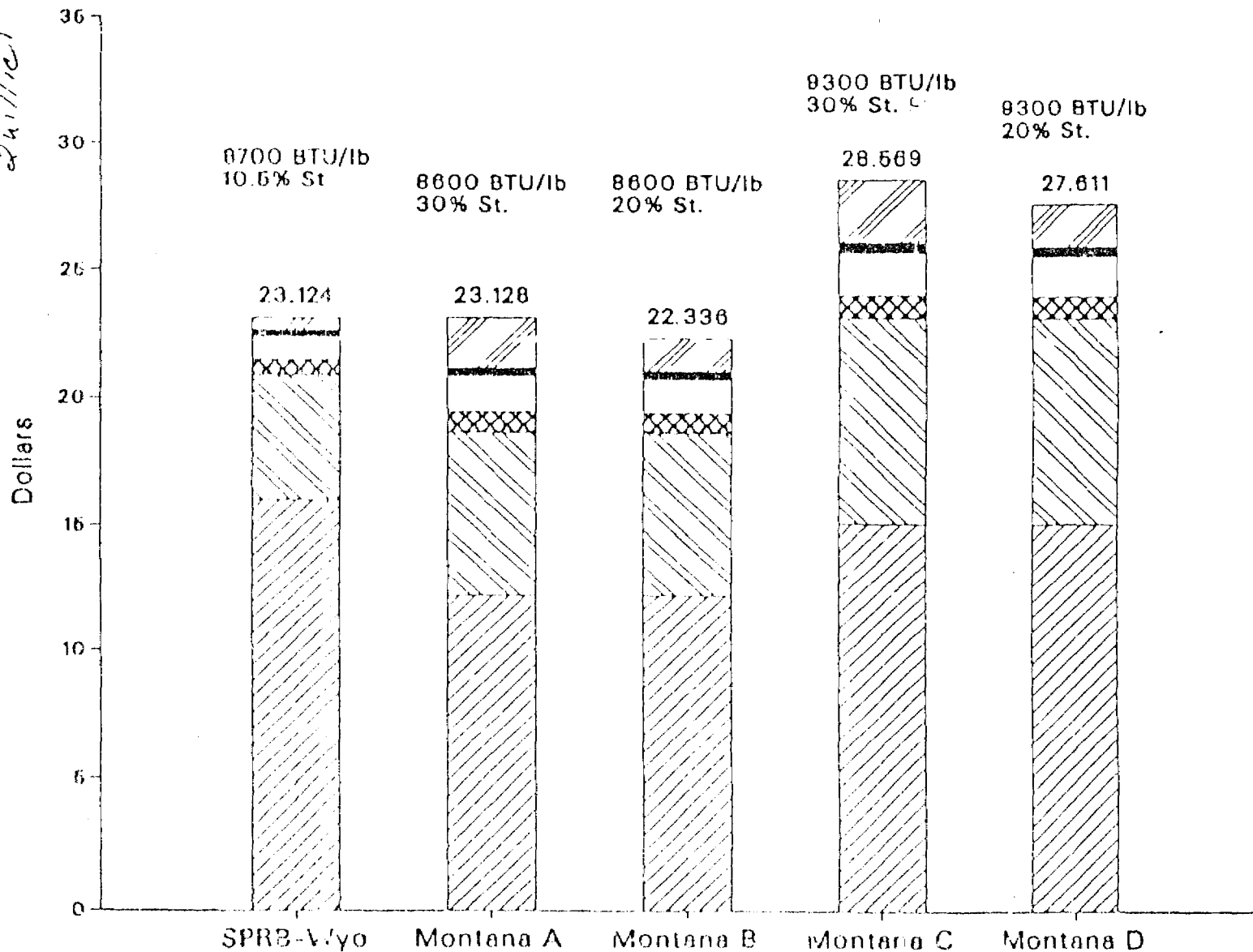


o Montana Coal Burn Sites
 x Wyoming Coal Burn Sites
 N Common Coal Burn Sites

EX4617 26
 HB 607
 2/14/85
 2/11/81

Coal Pricing Summary (Cost per Ton to Sherco)

HB 607
2/14/85
2411121



- Legend
- Severance Tax
 - Gross processing
 - Royalties
 - Misc taxes
 - Mine cost
 - Roll

Coal Price Breakdown (Cost per Ton to Sherco)

Cost component	SPRB-Wyo	Montana A	Montana B	Montana C	Montana E
Transportation	\$ 16.00	\$ 12.16	\$ 12.16	\$ 15.04	\$ 15.04
Mine costs	\$ 4.851	\$ 6.474	\$ 6.474	\$ 8.070	\$ 8.070
Royalties	\$ 0.890	\$ 1.371	\$ 1.272	\$ 1.691	\$ 1.571
Federal fees	\$ 0.625	\$ 0.772	\$ 0.741	\$ 0.850	\$ 0.834
Misc taxes	\$ 0.000	\$ 0.033	\$ 0.033	\$ 0.041	\$ 0.042
Severance tax	\$ 0.460	\$ 1.987	\$ 1.325	\$ 2.466	\$ 1.644
Severance tax rate	10.5 %	30.0 %	20.0 %	30.0 %	20.0 %
Gross proceeds (Ad valorem)	\$ 0.298	\$ 0.331	\$ 0.331	\$ 0.411	\$ 0.411
Total	\$ 23.124	\$ 23.128	\$ 22.336	\$ 28.569	\$ 27.611
Price of Coal	\$ 7.124	\$ 10.968	\$ 10.176	\$ 13.529	\$ 12.571
Price w/\$0.20 royalty	\$ 6.400	\$ 9.750	\$ 9.061	\$ 12.000	\$ 11.145
BTU per pound	8700	8600	8600	9300	9300

Assumptions:

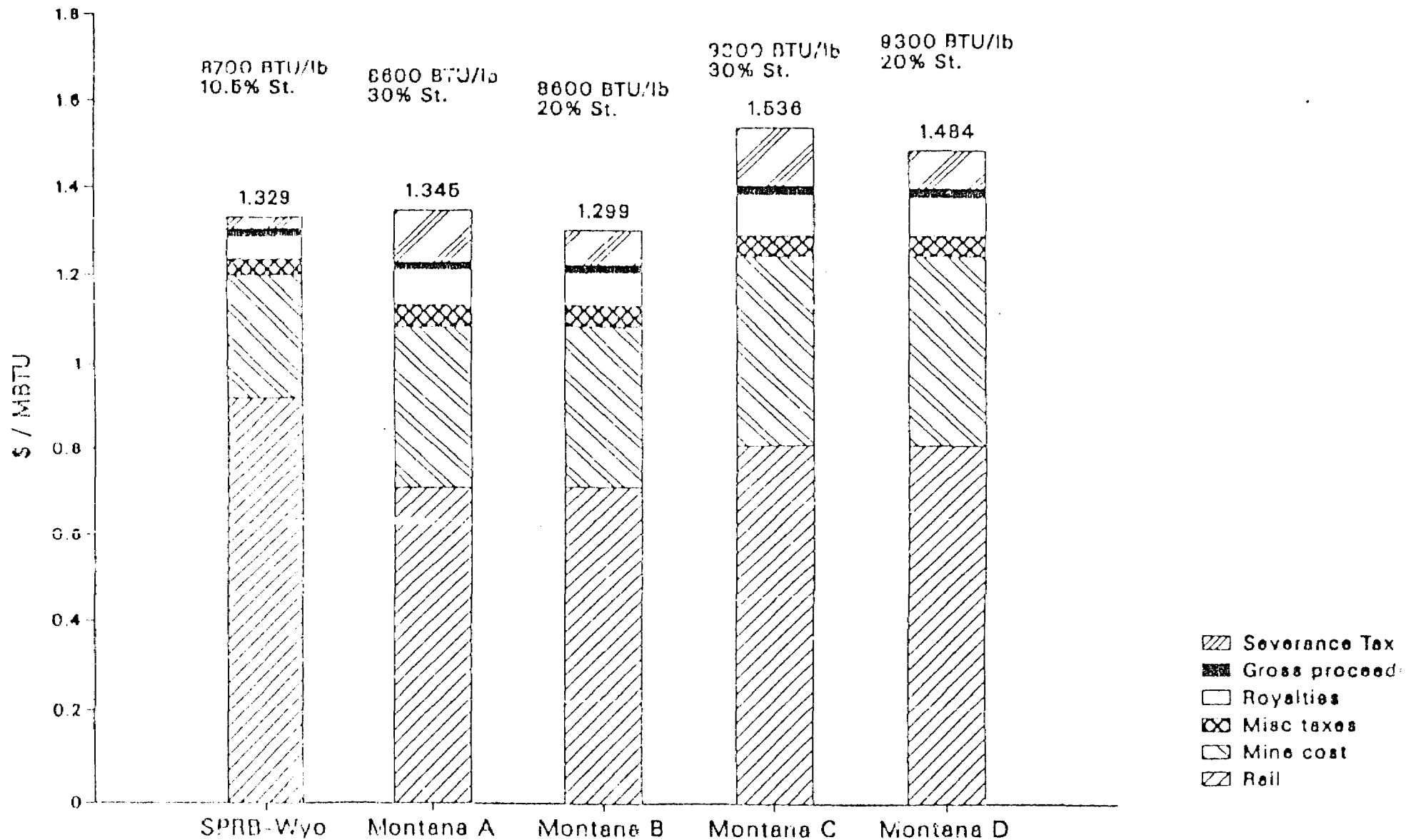
Coal costs - From Montana's Coal Industry (Facing an uncertain future); by Professor Paul E Polzin, University of Montana, Dec 1984 pp 9,15.

Royalties - Assumed to be \$0.20/Ton now, but increases to 12.5 % in mid to late 1980s.

Rail costs - From talk given by John Hertog at Montana Coal Forum (15 - 16 mills per Ton-mile).

Rail mileage - Colstrip/Kuohn to Sherco 760
Southern Montana to Sherco 940
Wyoming to Sherco 1000
(from BN and/or C+NW)

Coal Pricing Summary (Cost / MBTU to Sherco)



Coal Price Breakdown (Cost / MBTU to Sherco)

Cost component	SPRB-Wyo	Montana A	Montana B	Montana C	Montana
Transportation	\$ 0.920	\$ 0.707	\$ 0.707	\$ 0.809	\$ 0.809
Mine costs	\$ 0.279	\$ 0.376	\$ 0.376	\$ 0.434	\$ 0.434
Royalties	\$ 0.051	\$ 0.080	\$ 0.074	\$ 0.091	\$ 0.084
Federal fees	\$ 0.036	\$ 0.045	\$ 0.044	\$ 0.045	\$ 0.045
Misc taxes	\$ 0.000	\$ 0.002	\$ 0.002	\$ 0.002	\$ 0.002
Severance tax	\$ 0.026	\$ 0.116	\$ 0.077	\$ 0.133	\$ 0.088
Severance tax rate	10.5 %	30.0 %	20.0 %	30.0 %	20.0 %
Gross proceeds (Ad valorem)	\$ 0.017	\$ 0.019	\$ 0.019	\$ 0.022	\$ 0.022
Total	\$ 1.329	\$ 1.345	\$ 1.299	\$ 1.536	\$ 1.484
Price of Coal	\$ 0.409	\$ 0.638	\$ 0.592	\$ 0.727	\$ 0.676
Price w/\$0.20 royalty	\$ 0.368	\$ 0.567	\$ 0.527	\$ 0.645	\$ 0.599
BTU per pound	8700	8600	8600	9300	9300

Assumptions:

Coal costs - From Montana's Coal Industry (Facing an uncertain future); by Professor Paul E. Polzin, University of Montana, Dec 1984 pp 9,15.

Royalties - Assumed to be \$0.20/Ton now, but increases to 12.5 % in mid to late 1980s.

Rail costs - From talk given by John Hertog at Montana Coal Forum (15 - 16 mills per Ton-mile).

Rail mileage - Colstrip/Kuehn to Sherco 760
 Southern Montana to Sherco 940
 Wyoming to Sherco 1000
 (from BN and/or C+NW)



MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

February 14, 1985

WORKING TOGETHER:

American Baptist Churches
of the Northwest

American Lutheran Church
Rocky Mountain District

Christian Church
(Disciples of Christ)
in Montana

Episcopal Church
Diocese of Montana

Lutheran Church
in America
Pacific Northwest Synod

Roman Catholic Diocese
of Great Falls-Billings

Roman Catholic Diocese
of Helena

United Church
of Christ
MT-N.W.Y. Conference

United Methodist Church
Yellowstone Conference

Presbyterian Church (U.S.A.)
Glacier Presbytery

Presbyterian Church (U.S.A.)
Yellowstone Presbytery

MR. CHAIRMAN AND MEMBERS OF THE HOUSE TAXATION
COMMITTEE:

I am writing in opposition to HB 607.

The eleven denominational units of which the Montana Association of Churches is composed have unanimously adopted a position paper on Energy & Environment in which we urge the legislature to maintain the present coal severance tax.

Our vast coal reserves can be looked upon only as a transitional fuel, for the resource is exhaustible and non-renewable. Even coal may no longer be around in sufficient quantities late in the 21st century to meet the demands of our energy-hungry society.

The Christian faith sees the role of human beings in the world as that of a steward. Assuring that our present use of resources provides adequately for future generations is the essence of stewardship.

For this reason, I urge you to defeat HB 607.

Sincerely,

Cathy Campbell
Cathy Campbell
Legislative Liaison

February 18, 1985

Representative Gerald Devlin
Chairman, Committee on Taxation
House of Representatives
State of Montana
Helena, MT 59620

RE: House Bill 607 with Amendments

Dear Representative Devlin:

It has come to our attention that the Committee on Taxation will soon be considering the above captioned bill dealing with changes in the Montana Severance Tax. We are writing to indicate our support for this measure provided the proposed amendments are included.

We must be frank in stating that, in our opinion, the proposed changes in the Severance Tax do not go far enough. While we are encouraged that the State of Montana has finally addressed this difficult issue, a fundamental question of fairness remains. The tax has been, and remains, excessive to the extent that it raises serious doubts as to the economic viability of Montana coal as a fuel in existing and future generating units.

We appreciate the opportunity to share our views with your committee.

Sincerely,

DAIRYLAND POWER COOPERATIVE



Douglas D. Peterson
Director, Fuels Management

DDP:daj

cc: The Honorable Ted Schwinden
Governor, State of Montana
Helena, MT 59620

Mr. V. H. Wood
1400 W. 47th Street
Minneapolis, MN 55409

STATEMENT BY ATTORNEY GENERAL MIKE GREELY
TO THE HOUSE COMMITTEE ON TAXATION
Montana House of Representatives
House Bill 607
14 February 1985

Mr. Chairman, I request that you enter this statement into the record of testimony on House Bill 607.

Governor Ted Schwinden has worked hard to improve Montana's economic climate, and no one has greater respect for his efforts than I. His "Build Montana" theme has set a positive tone that is conducive to business growth, and he has taken meaningful steps to reduce the burden of state government on taxpayers. I am proud to have served as Attorney General with Ted Schwinden at the helm of our state, and I number myself among his staunchest supporters.

House Bill 607 is one aspect of the Governor's program, however, that I cannot support. The bill would provide a tax credit to coal producers against Montana's 30-percent coal severance tax, a "window of opportunity" through which coal producers could see their way clear, ostensibly, to increase coal production dramatically. The tax credit would apply to coal contracts signed or extended between January 1, 1985, and June 30, 1987. The effect of the credit would be a reduction of the coal severance tax rate to 20 percent.

The proposed tax credit, in the Governor's words, is an incentive to produce more coal. The Governor apparently expects this incentive to increase production so dramatically that the state will realize a net gain in revenues--at a 20-percent coal severance tax rate--over what we would collect at the present rate.

Implicit in the Governor's reasoning are two assumptions. Assumption one: Montana wants and needs a dramatic increase in coal production in order to reap the economic "benefits" of large-scale industrial development. Assumption two: State government needs more coal tax revenue so badly that it can justify subsidizing the coal industry in order to get it.

Mr. Chairman, I respectfully submit that both these assumptions are wrong.

Montana established its 30-percent coal severance tax in 1975 after exhaustive analysis and debate in both houses of the Legislature. I remember that debate vividly, because I participated in it as a member of the Montana Senate. I can attest that the Legislature did not act arbitrarily or capriciously in setting the coal severance tax rate at 30 percent. In setting that rate, the Legislature expressed a prevailing public sentiment that I'll summarize as follows:

--We Montanans are willing to develop our coal resources in order to meet the energy requirements of the nation, but only on our own terms. We insist on maintaining control of Montana's future, and we will not stand for the degradation of land, our economy, or our communities.

--We want those who profit from coal mining to pay the costs of mining.

--Because the public must endure the costs of "boom and bust" communities, together with the costs of more community services to handle the influx of population, the public should share in the profits of coal mining.

--A severance tax of 30 percent ensures not only an appropriate share of the profit to the public, but also discourages the kind of runaway industrial

development that devastates the land and results in overproduction.

Since enacting the 30-percent coal severance tax, Montana has faced an onslaught of special-interest attackers who want to reduce our tax or get rid of it altogether. During my first term as your Attorney General, a consortium of energy companies sued Montana, claiming that our severance tax impeded interstate commerce and was thus unconstitutional. The Legislature, with strong bipartisan support, appropriated to my office the resources necessary to fight that battle in three courts--state district court, the Montana Supreme Court, and the United States Supreme Court. Despite the fact that our opponents' resources dwarfed our own, and despite the fact that their lawyer was William Rogers, a former Secretary of State under President Nixon, we won our case in all three courts. The United States Supreme Court determined that our 30-percent coal severance tax does not impede interstate commerce, and that Montana has the right to impose the tax. The ruling effectively ended the legal challenge to our tax.

The arena shifted thereafter to the Congress of the United States and to the State Capitol of Montana. Our bipartisan congressional delegation has done yeoman work in beating back legislative attempts to limit the states' authority to tax resources. The Legislature, with bipartisan support, has appropriated a substantial sum to retain a Washington lobbying firm to assist our congressional delegation in meeting this challenge. In short, Mr. Chairman, Montana's response to the critics of our coal severance tax has been bipartisan and strong.

I have seen no indication that public sentiment in Montana has changed with respect to our 30-percent coal severance tax. In my view, this committee

would be wise to consider whether H.B. 607 would achieve the results that the Governor foresees, and whether those anticipated results reflect public sentiment on the issue of strip mining and coal taxation. A good starting point would be the newly completed study by Professors John Duffield, Arnold Silverman, and John Tubbs of the University of Montana: Montana Coal Market to the Year 2000: Impact of Severance Tax, Air Pollution Control and Reclamation Costs (prepared for the Montana Department of Commerce).

The study is useful in clarifying several important points relating to coal severance taxation. Among these is the often heard lament that Montana is losing coal business to Wyoming because our severance tax is so much higher than Wyoming's. Actually, the effective rate of Montana's coal severance tax, according to the Montana Department of Revenue, is slightly less than 21 percent after coal producers apply currently existing deductions and credits for gross proceeds taxes and other levies. The Department of Revenue projects that Montana's effective rate of coal severance taxation will drop even further by the fall of 1987, down to 18.5 percent, even if the Legislature does not enact H.B. 607. Wyoming's effective rate of taxation is about 14 percent--not much lower than Montana's.

Duffield, Silverman, and Tubbs point out that Montana and Wyoming have well defined "spatial" markets for their coal, meaning that location is a major factor in the marketability of coal. Within the 19-state area of the Montana-Wyoming coal market, Montana's share of the market has remained at a stable 10 percent since 1971; Wyoming's share of that same market has jumped from 16 percent to 53 percent during the same period. Why? Several reasons, say Duffield, Silverman, and Tubbs. After the Arab oil embargo of

1973-74, south-central states began a massive changeover from oil and gas to coal in generating electrical power. Of the 51 coal-fired plants built in that region since 1976, forty-one burned Wyoming coal, simply because Gillette, Wyoming, lies so much closer than Colstrip, Montana, to that market area. As a result, Wyoming's production jumped about 66 millions tons per year. By contrast, Montana's production grew about 4 million tons per year.

The point to remember, stress Duffield, Silverman, and Tubbs, is that Montana's 30-percent coal tax has had nothing to do with the dramatic growth of Wyoming coal production in contrast to the much more stable market share that Montana producers enjoy. The difference between Montana's and Wyoming's coal taxes, say the researchers, has had "an insignificant market impact."

The study also finds that most users and suppliers of Montana coal will renew their contracts whether the Legislature reduces the severance tax or not. Based on industry projections and other data, Montana's coal industry will experience a steady 3-4 percent annual growth rate through 1988, reaching 42 million tons per year. Beyond that, Montana's annual coal production will grow substantially, reaching a level between 48 million and 85 million tons in the year 2000, depending on the growth of electrical consumption in the market area.

The most dramatic conclusion of the study is that a severance tax reduction will "in no case generate sufficient increased production" to make up for the amount of tax money that Montana would have collected at the 30-percent rate. Herein lies the crux of the issue. The Legislature must

decide what the people of Montana can gain by reducing the coal severance tax. I submit that any anticipated "gains" are illusory. Though I agree that dramatically increased strip mining would provide more jobs, and would result in some economic benefit during the short term, I must also point out that dramatically increased strip mining would generate tremendous environmental, social, and long-term economic impacts. Someone must pay the cost of coping with those impacts. Someone must pay for the additional police and fire protection in the rapidly growing mining communities, for the improved highways and roads to and from the mines, for the new schools, for the enlarged courthouses and hospitals, for the upgraded water and sewage systems, and all else that a rapidly growing coal industry would bring. That someone, of course, is Montana's taxpayers. The faster the coal industry grows, the more demand we will see for coal tax revenues to cope with the impacts of that growth. Does it make sense to risk reducing those revenues in order to have faster growth in strip mining? I think not. A legislator who votes for H.B. 607 will send a message back to the taxpayers of his or her district, and that message is: "I don't believe that you taxpayers are paying a big enough share of the costs associated with strip mining. And I believe that the corporations who profit from strip mining are paying too much. So, with my vote for H.B. 607, I will increase the share that average taxpayers pay, while increasing profits for the corporations."

I doubt that any serious analyst of Montana's political scene would suggest that the Legislature could ever return to a 30-percent level of coal severance taxation, if H.B. 607 were to become law. Were coal production to increase dramatically within the two-and-one-half-year period that the bill specifies, the coal companies would threaten production cutbacks if the

Legislature reinstates the 30 percent rate. If production does not increase substantially, the companies will argue that the "window of opportunity" was not open far enough, that the trial period was not long enough, or that the tax credit was not big enough. Moreover, the Legislature would have jettisoned the rationale for the 30-percent coal severance tax--the rationale that emphasizes slow, steady, orderly growth of the strip mining industry, a rationale that the voters of Montana endorsed at the polls in 1976. Reinstating that rationale would be difficult indeed.

Mr. Chairman, I offer this testimony not because I question the good intentions of the Governor or the sponsors of H.B. 607. I offer this testimony because I have serious doubts about the perceived "benefits" of reducing the effective rate of coal severance taxation.

During the 10-year history of our 30-percent coal severance tax, Montana's coal industry has grown. Our industry has received more new contracts since passage of the 30-percent coal severance tax than it had received before the tax. Two recent contracts, the Bellriver and Colstrip 4, will increase Montana's coal production by about 9 million tons annually. Independent researchers like Duffield, Silverman, and Tubbs, tell us that the industry will continue to grow. It may not grow as fast as Wyoming's coal industry, but neither will it overbuild its production capacity to the tune of 60 million excess tons annually, requiring cut-rate bidding, as Wyoming's industry has done.

The researchers tell us that all taxes, including Montana's coal tax, represent only 9.8 percent of the delivered price of coal, compared to 20 percent for mining costs, 60 percent for transportation, and 10.2 percent for company profit. They also tell us that hard analysis does not support the

expectation of a net gain to the state from a reduction of the coal severance tax.

We know, too, that the coal market is presently weak, which suggests strongly that now is not the time to contemplate changes in our coal taxation policy. Perhaps more appropriate at this time is a discussion of how the state should allocate its coal tax revenues. Having served in the Legislature that enacted the 30-percent tax, I know that the Legislature did not intend the present revenue allocation formula to remain inviolate forever. The Legislature knew that needs would change. Perhaps now is a good time to assess our needs with an eye to re-allocating coal tax money where appropriate. Our agriculture industry is in desperate straits, facing inadequate prices, tight credit, and a debate over ending federal farm price supports. Agriculture is a much bigger industry in Montana than coal mining; our family farms and ranches are much more in need of a few percentage points of profit than the coal corporations. Perhaps now is a good time to discuss some form of state help to farmers and ranchers.

Our local governments are in equally desperate straits. Revenues are down, demand for services is up. Too long the Legislature has neglected local government's problems, ignoring the fact that local government is the government closest to the people. Perhaps we should discuss ways to allocate coal tax revenue to shore up the most important government structures in our society--the local ones.

In my view, Mr. Chairman, these are problems more worthy of this Committee's consideration than H.B. 607. Thank-you very much.

AMENDMENTS TO HOUSE BILL ⁶⁰⁷~~706~~

1. Page 6, Line 23

Following: "purchaser" "
Insert: "and multiplying the total by $33\frac{1}{3}\%$ "

2. Page 9, Line 18

Following: "information"
Strike: "confidential"
Insert: "open to public inspection -- certain exceptions.
All the information filed with the department in
accordance with [section 5] is public record and
open to public inspection, except the coal sales
agreements as specified in (2)(a) and (b) of [Section
5].

3. Page 9, Line 19 through 23

Following: "15-2-201,"
Strike: "the returns", lines 20 - 22 in their entirety,
and "department," in line 23
Insert: "coal sales agreements specified in [section 5] (2)(a)
and (b)"

VISITORS' REGISTER

COMMITTEE

BILL NO. HB 607DATE 2-14-5

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>John Alarick</i>	Helena MT	✓	
<i>Frank Reedeker</i>	Glenview MT	✓	
<i>Ken Williams</i>	Butte, Western Energy	✓	
<i>Herman Bentel</i>	Bozeman, Mont		✓
<i>F.H. Boles</i>	HELENA MICHIGAN	✓	✓
<i>WALDO SHANNAN</i>	HELENA MONTANA	✓	
<i>CAROL FARRIS</i>	Great Falls MSDWC		✓
<i>SHARLET GAYBORN</i>	" " MDCC		✓
<i>Rep Bob Paulson</i>	RD 70 Butte	✓	
<i>Cathy Campbell</i>	MT Assn of Churches		✓
<i>EARL J. REILLY</i>	Mont Senior Citizens		✓
<i>Margie Taylor</i>	Meridian Minerals Co	✓	
<i>Mary Kaye Anderson</i>	Butte, Montana	✓	
<i>Bob McCarthy</i>	Multi Community Union		✓
<i>Susan Cottingham</i>	MT. Club. Serva Club		✓
<i>Jean Driscoll</i>	Helena, MT		✓
<i>John Driscoll</i>	Bozeman, MT		✓
<i>Jim Jensen</i>	120 Alderson Billings		X
<i>Long Jewett</i>	MT. Demo Party		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

COMMITTEE

BILL NO. HB 607DATE 2-14-85SPONSOR Gullick

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Russ Brown	Helena N.P.R.C.		✓
J.R. McPherson	Sheridan, WY	✓	
JOE PRESLEY	Billings MT	✓	
Victor H. Wood	Minneapolis MN	✓	
Don McConville	Butte MT	✓	
Keith Powell	Tongue River City Miles		✓
Howard Best	Brookline MT		✓
Don McConville	Butte MT		✓
Bill Robinson	Butte MT	✓	
MARTIN WHITE	Butte MT	✓	
LARRY ICEWOLE	Billings MT. Montco	✓	
Pat Wilson	Billings MT "	✓	
DON REED	Helena, M.E.I.C.		✓
Theresa Whitlock	" "Gov Office	✓	
W. W. W. W.	MT. Trade Com.	✓	
Steve Thomas	Helena, MT		✓
Don McConville	Butte MT	✓	
John McConville	Butte MT	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Jim Stephens

415 W. Elba Lane
1303. Mt.

VISITORS' REGISTER

COMMITTEE

BILL NO. HB 607DATE 2-14-85SPONSOR QUILICI

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
GEO. OCHENSKI	HELENA E.I.C.		X
Sam Morris	Helena	✓	
Les F. Blucher	Helena	✓	
Doc Goss	Helena	✓	
Tom L...	Helena	✓	
Mike Moore	Helena	✓	
Norman...	Helena	✓	
Dan Brown	Helena	✓	
John H. Perry	Walt AFL-CIO		X
James Goss	Helena		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Taxation Committee
February 20, 1935
Page Six

Representative Hanson moved to change the amendment to show that it was also the "first" Monday. The motion carried unanimously.

Representative Asay moved the adoption of the amendments submitted by Chairman Devlin. He explained these amendments.

The motion carried unanimously.

Representative Asay moved that this bill DO PASS AS AMENDED. The motion carried unanimously.

Disposition of House Bill 607: Representative Keenan asked if it was the intention of the chairman to take this bill to the floor of the house at this time as it was a revenue bill and did not need to be out before transmittal.

Chairman Devlin answered that it was his intention to send it out of here.

Representative Harrington stated that he signed this bill, but he did not think that it should go out on the floor right now before transmittal - this is a revenue bill and it does not have to go out and that this would take another two or three hours on the floor and he felt that it was not good policy to do this.

Chairman Devlin replied that there was a question of whether this was a revenue bill or not and it does not reduce existing revenue and some other things have to happen before it would change any kind of revenues.

Representative Gilbert said that the way the bill is written, we are maintaining the basic assumption level and no matter what happens, they always have the same revenue that they have coming in now and it cannot reduce revenue.

Representative Keenan stated that whether or not it reduces revenue in this biennium or two bienniums, they should look at the definition of revenue - it either enhances revenue or decreases revenue and revenue is revenue and it does not matter if it is now or two years

Taxation Committee
February 20, 1985
Page Seven

down the road or ten years down the road, it falls under the definition of revenue and she felt that this deserves a lot of debate and that they would be remiss in throwing it out on the floor when the house cannot give it the kind of hours they need. She continued that he was just clogging up the system, they are not going to give it a fair hearing and she did not understand what the motive is.

Chairman Devlin responded that he had great faith in the debate on the house floor.

Representative Iverson stated that this is not necessarily a revenue bill and he thought that if anyone here could make that judgment without talking to the president of the senate, they don't know what they are talking about unless he knew that they were going to accept it over there. He commented that just because the committee says it is a revenue bill that they have to take it.

Representative Ream said that he thought a revenue bill was a bill that affects taxes collected.

Dave Bohyer explained that a revenue bill is a bill that will increase or decrease tax collections and he is sure that is how the rule reads.

Representative Sands asked if that is revenue for the current biennium.

Dave Bohyer responded that the rule simply states that the bill will increase or decrease tax collections and that is the entirety of the rule.

Representative Koehnke said that he talked to Representative Ramirez yesterday and he (Ramirez) indicated that he was going to the rules committee to get the same rule they had two years ago and that was that every bill that came through here would be treated as revenue.

Chairman Devlin replied that he was not informed of this and looking at it, there was some things that have

Taxation Committee
February 20, 1935
Page Eight

to happen before it can ever change any kind of tax and the existing tax that is there now is not changed unless someone takes advantage of the window of opportunity.

Representative Keenan asked if this has been discussed with leadership.

Chairman Devlin replied that he was sure it had been discussed and he had told almost everyone for the last week that they are going to take executive action on this today - he told the press and everybody else that wanted to know.

Representative Keenan asked if there was an agreement between the leadership that this bill would be held until after transmittal.

Chairman Devlin answered, "Not to my knowledge - I have never heard any agreement between the two."

Representative Keenan asked if they could be at ease and request that Representative Marks and Representative Vincent address that.

Chairman Devlin responded that in the order of business of committee work, we should do our committee work.

Representative Ellison said that if you are going to discuss this, you better get the president of the senate in here, as he is the boy who is going to decide if he is going to take it or not. He commented that if they remember in the past, they have lost some.

Representative Raney stated that this may be the biggest bill that comes before the legislature and he couldn't agree more than with what Nancy is saying and to try and put this on the board when they are going to do forty, fifty, sixty bills a day is not just good politics and he thought that they should be able to hear this in its fullest, at leisure and not pressured by the leadership or the chairman of the day to see how fast they can get through the bill.

Taxation Committee
February 20, 1985
Page Nine

Chairman Devlin asked if he believed that it would take more floor time than the one bill they had yesterday.

Representative Raney responded that he didn't think so as it is not as full of emotion as that bill but it does impose a tremendous amount of numbers, facts and figures that have not been disclosed so there is a tremendous amount of information to be put out.

Representative Switzer said that he thought that they should go on with this bill, get it on the floor and move it to the top of the board and take all the time that is necessary.

Representative Cohen said that Representative Harrington indicated that he had signed on this bill and if this bill is going out of here, he is going to vote against it.

Chairman Devlin replied that that is his prerogative and just because he signed on the bill, it doesn't mean he has to support it.

Representative Ream said that if you follow the argument that this does not increase or decrease taxes, then there is no need for the bill; and he thought it was truly a revenue bill.

Representative Iverson repeated that no matter what this committee believes, it is up to the president of the senate.

Representative Keenan stated that she felt they should stand at ease and go get the president of the senate.

Representative Harp said that if they do act on this bill today, the chairman does not have to send it out, he could hold on to it for a couple days and ask the leadership to give us direction and in that way, at least we would be further along in the process.

Chairman Devlin replied that he was not sure what the rule is or how much time he has, but he has held onto one or two this year and done it the next day.

Taxation Committee
February 20, 1985
Page Ten

Representative Harrington stated that he talked to the sponsor and he indicated that this was definitely a revenue bill and this was just two days ago and he finds it hard to see that this has changed.

Chairman Devlin answered that rather than taking the chance that this be accepted or not, he felt that it was too important of a bill to take this chance as to whether the senate is going to take it or not.

Representative Iverson indicated that they were just wasting a bunch of time and if the committee acted on it today, it would not get on the floor until Friday.

Chairman Devlin said that they would consider the bill today.

Representative Williams moved adoption of the governor's amendments. See Exhibit 3.

Terry Cohea, Executive Assistant to the Governor, explained that amendment 1 would clarify that the credit is $1/3$ of the tax paid and the other two amendments make clear that the information that is filed with the department is open to public view, but coal contracts are open to public view only upon order by the governor.

There was considerable discussion over whether this information should be made available to the legislature or the revenue oversight committee.

The motion carried unanimously.

Representative Williams moved the bill as amended.

Representative Hanson passed out some additional amendments. See Exhibit 4. She moved DO PASS.

Representative Asay made a substitute motion to DO NOT PASS.

Representative Hanson explained that $1/3$ of this tax credit would go to the new purchaser, $1/6$ to the existing purchaser on a pro rata basis on prior year production and $1/2$ to the state and this does not cost the state a dime and it is an insurance policy to keep the existing purchasers here and foster new growth.

Taxation Committee
February 20, 1965
Page Eleven

Representative Raney asked if this isn't a 50% rebate on the tax instead of 1/3.

Representative Hanson replied that she did not understand it that way.

There was considerable discussion on the amendment and a vote was taken and the DO NOT PASS motion on the amendment passed with Representative Switzer, Representative Gilbert, Representative Devlin and Representative Hanson voting no.

Representative Asay distributed and moved to adopt the amendment shown in Exhibit 5.

Representative Zabrocki asked who proposed this amendment.

Representative Asay replied that the source was from the existing coal companies who had existing contracts.

Representative Williams said that this is the amendment that was proposed by the coal industry and it still takes the emphasis away from the main purpose of the governor's bill and that is to increase coal production in Montana.

Representative Asay said that the intent here was to encourage new production and extension of existing contracts.

Chairman Devlin asked if this would let new contracts that are signed on during the window of opportunity run on for the life of the contract.

Representative Asay said for the life of the contract - ten or fifteen years - whatever it is - it would be what the conditions are at the time of signing.

Representative Gilbert said that the bill is only a crack of opportunity and with this amendment, it truly makes it a window of opportunity.

Representative Williams made a substitiue motion to DO NOT PASS on this amendment as the governor's office has made it quite clear, they do not want this amendment.

Taxation Committee
February 20, 1985
Page Twelve

A roll call vote was taken on the DO NOT PASS motion and the motion failed with 9 voting yes and 11 voting no. See roll call vote.

Chairman Devlin said the vote would be reversed on a DO PASS.

Representative Williams withdrew his motion to DO PASS AS AMENDED and asked that they take no action on the bill at this time at all.

Representative Keenan said that in the spirit of a window of opportunity, the opportunity has now become a barn door and she moved to TABLE this bill.

A vote was taken on the motion to TABLE and it failed on a vote of 7 yes and 12 no votes. See roll call vote.

Representative Gilbert moved DO PASS AS AMENDED.

Representative Williams stated that he thought they should do some thorough investigating as to whether they are in the scope of the bill with the title and he did not think they wanted to send something to the floor with this kind of amendment and it is questionable as to whether the title is legitimate or can even be adapted to the amendment.

Representative Gilbert moved to amend the bill as per Exhibit 6. He explained that this is to allow coal companies to negotiate a coal contract knowing whether or not that contract falls under the window of opportunity. He stated that it would not do much good to negotiate that coal contract in good faith thinking it was under the window of opportunity and get the contract written up and signed and find that all of a sudden they were not eligible.

The motion carried with Representative Williams, Representative Schye, Representative Keenan, Representative Zabrocki, Representative Ream and Representative Raney voting no.

Taxation Committee
February 20, 1985
Page Thirteen

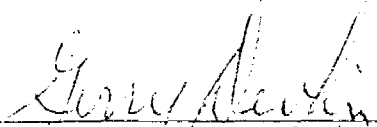
Representative Switzer questioned the title and explained that the amendments offered by Representative Asay did specifically address the life of the contract, which indicates a time and he thought it was well within the scope of the bill.

Representative Iverson moved to amend the title to conform with the amendment.

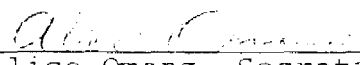
There was considerable discussion and a vote was taken. The motion passed with Representatives Cohen, Representative Harrington, Representative Keenan, Representative Schye, Representative Ream, Representative Raney and Representative Williams voting no.

A vote was taken on the DO PASS AS AMENDED motion. The motion carried with 12 voting yes and 8 voting no. See roll call vote.

ADJOURNMENT: There being no further business, the meeting adjourned at 9:54 a.m.



GERRY DEVLIN, Chairman



Alice Omang, Secretary

STANDING COMMITTEE REPORT

Page 1 of 2.

February 20, 1985

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 607

first reading copy (white)
colorPRODUCTION INCENTIVE TAX CREDIT TO
COAL SEVERANCE TAX

Respectfully report as follows: That HOUSE Bill No. 607

be amended as follows:

1. Page 2, line 9.

Following: "(2)"

Insert: "(a)"

2. Page 2, line 11.

Strike: "(a)"

Insert: "(i)"

3. Page 2, line 14.

Strike: "(b)"

Insert: "(ii)"

DEPAXX

Page 2 of 2.
HB 607

February 20, 1985

4. Page 2.

Following: line 21

Insert: "(b) For purposes of calculating incremental production after July 1, 1987, for coal purchases under subsection (2)(a), the purchaser's base consumption level must be decreased if and at the time that any purchaser's sales agreement expires according to the terms of the agreement in effect on January 1, 1985. The base consumption level must be decreased by that quantity of coal included in the base consumption level that resulted from purchases under the expired agreement.

5. Page 6, line 23.

Following: "purchaser"

Insert: "and multiplying the total by $33 \frac{1}{3}\%$ "

6. Page 9.

Following: line 16

Insert: "(4) The department shall, at the request of any coal mine operator, make a formal determination of eligibility of the new production incentive tax credit within 90 days of the request.

7. Page 9, line 18.

Following: "information"

Strike: "confidential."

Insert: "open to public inspection -- certain exceptions.

(1) All information filed with the department in accordance with [section 5] is public record and open to public inspection, except the coal sales agreements specified in [section 5](2)(a) and (2)(b).

(2)"

8. Page 9, lines 19 through 23.

Following: "15-2-201," on line 19

Strike: "the returns", lines 20 through 22 in their entirety, and "department," on line 23

Insert: "coal sales agreements specified in [section 5](2)(a) and (2)(b)"

AND AS AMENDED

DO PASS

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE February 20, 1985

BILL NO. HB 607

TIME _____

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.		✓
WILLIAMS, MEL, V.Chrm.	✓	
ABBAMS, HUGH		✓
ASAY, TOM		✓
COTEN, BEN	✓	
ELLISON, ORVAL		✓
GILBERT, BOB		✓
HANSON, MARIAN		✓
HARRINGTON, DAN	✓	
HARP, JOHN		✓
IVERSON, DENNIS		✓
KEENAN, NANCY	✓	
KOSHNIKE, FRANCIS		✓
PATTERSON, JOHN		✓
RANEY, BOB	✓	
REAM, BOB	✓	
SANDS, JACK		
SCHYE, TED	✓	
SWITZER, DEAN		✓
TABBROCK, CARL		✓

7

12

Alice Omand
Secretary Alice Omand

Chairman Gerry Devlin

Motion: TO TABLE

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE February 20, 1985

BILL NO. HB 607

TIME

NAME	AYE	NAY
DEVLIN, GERRY, CHRM.		✓
WILLIAMS, MEL, V. CHRM.	✓	
ABRAMS, HUGH	✓	
ASAY, TOM		✓
COHEN, BEN	✓	
ELLISON, ORVAL		✓
GILBERT, BOB		✓
HANSON, MARIAN		✓
HARRINGTON, DAN	✓	
HARP, JOHN		✓
IVERSON, DENNIS		✓
KEENAN, NANCY	✓	
KOEHNKE, FRANCIS	✓	
PATTERSON, JOHN		✓
RANEY, BOB	✓	
REAM, BOB	✓	
SANDS, JACK		✓
SCHYE, TED	✓	
SWITZER, DEAN		✓
ZABROCKI, CARL		✓

9

11

Secretary Alice Omang

Chairman Gerry Devlin

Motion: DO NOT PASS

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE February 20, 1935 BILL NO. HB 607 TIME _____

NAME	AYE	NAY
DEVLIN, GERRY. Chrm.	✓	
WILLIAMS, MEL, V. Chrm.		✓
ABRAMS, HUGH	✓	
ASAY, TOM	✓	
COHEN, BEN		✓
ELLISON, ORVAL	✓	
GILBERT, BOB	✓	
HANSON, MARIAN	✓	
HARRINGTON, DAN		✓
HARP, JOHN	✓	
IVERSON, DENNIS	✓	
KEENAN, NANCY		✓
KOEHNKE, FRANCIS		✓
PATTERSON, JOHN	✓	
RANEY, BOB		✓
REAM, BOB		✓
SANDS, JACK	✓	
SCHYE, TED		✓
SWITZER, DEAN	✓	
ZABROCKI, CARL	✓	
	12	8

Secretary Alice Omang

Chairman Gerry Devlin

Motion: DO PASS, AS AMENDED.

Taxation Committee
March 19, 1985
Page Eight

DISPOSITION OF HOUSE BILL 607: Representative Asay moved that they reconsider their action on this bill.

Representative Ream made a substitute motion to pass consideration on this for a day or two as he thought it was unfair to spring this on the committee like this and it is unfair that he had to find out about it by looking at the newspaper.

Representative Williams indicated that he would support the proposed amendments, which will put the bill back in its original form.

There was much discussion on the motion; Chairman Devlin said he would call the question, but he felt that everyone is here, it is a controversial bill, and action should be taken on it when all the committee members are here.

A vote was taken on the motion to pass consideration for the day and the motion prevailed with 11 voting aye and 9 voting no. See Roll Call Vote.

Chairman Devlin announced that the committee would be taking action on this bill tomorrow at 10:00 a.m.

CONSIDERATION OF SENATE BILL 432: Senator Eck, District 40, explained that when she was on taxation committee, it occurred to her that all too frequently the information they wanted was not readily available so she introduced this bill, which would require the Department of Revenue to include additional information in its biennial report and to hold a public hearing on its contents.

PROPOSERS: There were none.

OPPOSERS: There were none.

QUESTIONS ON SENATE BILL 432: Representative Zabrocki asked if these meetings would be in Helena.

Senator Eck responded that it would be in Helena and it might be done when the Revenue Oversight Committee is meeting.

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE March 20, 1985 BILL NO. HB 607 TIME

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.	✓	
WILLIAMS, MEL, V.Chrm.	✓	
ABRAMS, HUGH	✓	
ASAY, TOM	✓	
COREN, BEN		✓
ELLISON, ORVAL	✓	
GILBERT, BOB		✓
HANSON, MARIAN	✓	
HARRINGTON, DAN	✓	
HARP, JOHN	✓	
IVERSON, DENNIS	✓	
KEENAN, NANCY		✓
KOEHNKE, FRANCIS	✓	
PATTERSON, JOHN	✓	
RANEY, BOB		✓
REAM, BOB		✓
SANDS, JACK	✓	
SCHYE, TED	✓	
SWITZER, DEAN	✓	
LABROCKI, CARL	✓	

15

5

Alice O'mang
Secretary Alice O'mang

Chairman Gerry Devlin

Motion: DO PASS, AS AMENDED

PROPOSED AMENDMENTS
House Bill No. 607
Introduced Copy

Exhibit 12
HB 607
3/20/85
Rep. Asay

1. Page 6, line 23.

Following: "purchaser"

Insert: "and multiplying the total by 33 1/3%"

2. Page 9.

Following: line 16

Insert: "(4) Any coal mine operator or purchaser may, for the purpose of determining the eligibility of coal production for the new production incentive tax credit, file with the department a petition for a declaratory ruling as provided in 2-4-501. The department shall issue a ruling on the petition within 90 days of the date the petition was filed with the department.

3. Page 9, line 18.

Following: "information"

Strike: "confidential."

Insert: "open to public inspection -- certain exceptions.

(1) All information filed with the department in accordance with [section 5] is public record and open to public inspection, except the information required under [section 5(1)(b)] and the coal sales agreements specified in [section 5(2)(a) and (2)(b)].

(2)"

4. Page 9, lines 19 through 23.

Following: "15-2-201," on line 19

Strike: "the returns" on line 19 through "department," on line 23

Insert: "the information required under [section 5(1)(b)] and the coal sales agreements specified in [section 5(2)(a) and (2)(b)]"

Asay
(12)

NEW SECTION. Section 6. Returns and taxpayer information open to public inspection -- certain exceptions.

(1) All information filed with the department in accordance with [section 5] is public record and open to public inspection, except the information required under [section 5(1)(b)] and the coal sales agreements specified in [section 5(2)(a) and (2)(b)].

(2) Except during proceedings before the state tax appeal board pursuant to 15-2-201, the information required under [section 5(1)(b)] and the coal sales agreements specified in [section 5(2)(a) and (2)(b)] are open to inspection only upon the order of the governor, under rules to be prescribed by the department, or upon order of a court of competent jurisdiction.

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

April 11, 1985

The sixty-eighth meeting of the Senate Taxation Committee was called to order by Chairman Thomas E. Towe at 8:05 am in the Old Supreme Court Chambers of the State Capitol.

ROLL CALL: All members of the committee were present.

Chairman Towe asked Vice Chairman Mazurek to assume the chair as he has previously appeared as an opponent to HB 607 and did not want to prejudice the fair hearing of the bill. Vice Chairman Mazurek opened the hearing on HB 607.

CONSIDERATION OF HB 607: Representative Joe Quilici, House District 71, was recognized as chief sponsor of the bill. He said that this was not an easy piece of legislation to carry, but that it was necessary. He said that previously he had been a defender of the coal tax, but that now times have changed. He said that in 1975 the issue was not the severance tax, but the impacts of coal development. He said the predicted impacts never came to pass. He said that the bill would not change the receipt of revenue, but provides a "window of opportunity" for new coal contracts to have a reduced tax for a limited period of time. He said the state cannot afford the potential revenue and job loss if these new contracts are not secured. He asked the question if the credit would increase the production of coal and answered it saying that would happen only if the coal companies pursued the contracts. He noted that the legislation sunsets in 1987. He said it is a clean piece of legislation as presented and that it should not be amended by the committee.

PROPOSERS

Ms. Teresa Cohea, executive assistant to Governor Ted Schwinden, submitted her testimony on the bill in writing (Exhibit 1).

Representative Bob Bachini, House District 14, submitted his testimony in writing (Exhibit 2) and also read into the record a statement by Carl Knutson, state legislative director of the Brothers of the Maintenance of Way, (Exhibit 3).

Representative Ray Peck spoke in support of the bill saying that it is a challenge to the coal companies that can only benefit the state and people.

Mr. James D. Mockler, executive director of the Montana Coal Council, submitted his testimony in writing (Exhibit 4). He also submitted for the record correspondence on the issue of freight rate increases (Exhibit 5).

Mr. Bill Robinson, Western Energy Company and President of the Montana Coal Council, said that contracts are affected by the tax. He said that a reduction of \$1 per ton would be significant. He asked that the committee pass the bill and conduct the test of

whether or not coal contracts would increase.

Dr. Paul E. Polzin presented the committee with a copy of a study on Montana coal (Exhibit 6) and a summary of the study (Exhibit 7). He said that the basic job loss to the state would be \$10 to 18 million per year if the bill does not pass. He said the bill would improve the competitive advantage of Montana coal. He said the only way to reduce coal cost is to reduce the tax, reduce the mining cost or reduce transportation cost. He said that even a small change in any factor would make a difference. He said that Montana has experienced closure of railroads, mines and mills in the last years and that we need some growth in other basic industry. He said that in 1983 the coal industry provided about 1300 jobs in the state for a payroll of \$53 million. He said that is 1.6 percent by the employment measure and 3.6 percent by the income measure, demonstrating that these are very desirable attractive positions. He said the coal boom that was predicted never materialized because gassification and liquification were too expensive, there were changes in the air pollution regulations and the demand for electricity declined. Coal, he said, is sold on long term contracts and after 1987 our contracts do not call for any additional increase. He said there are only two coal fired generating plants being built now in Minnesota and Wisconsin, Montana's primary market area. He said that our competitiveness with other producers would be affected by a scheduled reduction in the severance tax rate in Wyoming, a new railroad serving the Wyoming coal fields. He said that none of the problems are insurmountable, but that they must be dealt with by passage of the bill. He said that Montana cannot afford a continued decrease in economic base.

Mr. Norm Starr, president of WETA, spoke in support of the bill as a rancher from Melville. He said that his property taxes have gone up 50 percent in five years. He said that agriculture is in trouble and that a broader tax base would help. He said that agriculture cannot continue to pay. He said that working people eat beef and that too would help agriculture. He said the choice here is 30 percent of nothing or 20 percent of something.

Representative Tom Asay, House District 27, submitted for the record a list of signatures of his constituents who support HB 607 (Exhibit 8).

Mr. Gary Langley of the Montana Mining Association said that they support the bill.

Mr. Dave Goss of the Billings Area Chamber of Commerce said that the secondary impact of mining coal is seen in increased retail sales in the surrounding areas. He said that a hundred tons of coal mined represented a million dollars of trade.

Mr. Bill Olson, Montana Contractors Association, rose in support of the bill.

Mr. Mike Fitzgerald, Montana International Trade Commission, said that a \$1 reduction in the delivered price makes a significant

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difference in obtaining the contract. He said it is important now to test the reduction of the tax and see if the 30 percent tax is no longer prudent. He said that the state must change policy or kill the goose that laid the golden egg.

Mr. Bob Kopriuicka, a Butte businessman, rose in support of the bill.

Ms. Janelle Fallon said that the Montana Chamber of Commerce wanted to be on record in support of the bill.

Senator Pat Goodover rose in support of the bill.

OPPONENTS

Mr. John Driscoll, Public Service Commissioner, said that the coal tax was generated by the people to serve the common good. He said that it was studiously written around the metallic minerals which did not have the severance tax. He said all had supported it when it was passed in 1975. He said that it is the bill of all, not just of Senator Towe. He said that Senator Towe had been most commendable in taking the time to defend the tax. He said he was appearing before the committee in opposition to the bill because it was time to stand up and take the time to do what Senator Towe had done.

He said that with the status quo there is a 65 percent chance of getting the contract in question. He said that with the bill the chances would be only 75 percent. He said that the credit is being too easily extended. He said the down side risk was too great for so little gain. He said that the bill is a move to permanently reduce the tax. He said the bids on the Sherco contract were already submitted and could not be affected by the legislation.

Mr. Driscoll said the two utility plants proposed for construction may not be built. He said the Legislature is at a decided disadvantage in policy analysis compared to the executive branch. He said there is already \$11 million being taken from the coal tax trust for "current operations". He said the coal tax is not what the 1975 Legislature thought it would be, but that we need it more than ever. He said it is a way of collecting economic rent.

Mr. Driscoll then discussed the corporate strategy for transportation costs. He said that the railroads get the coal on a marginal price and then sell it to the utility companies at the highest price and pick up what they can of the difference. He said that the railroads are a greater problem than taxation in keeping coal prices down. He called the railroads a "tapeworm out of control".

Mr. Driscoll distributed to the committee letters and other information on the Staggers Act. He said that he hoped our Governor would support it. He said there is an almost total absence of any competitive transportation. He said that bulk long hauls cannot be done by trucks. This information is found in Exhibit 9.

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Commissioner Driscoll concluded saying that Montana is not anti-business, that Montana has the problem of a frustrated Governor. He encouraged the committee to deal with the real problem and not with coal tax severance.

He concluded saying that if the bill had to be passed at least it should be amended. He presented proposed amendments in Exhibit 10.

Ms. Anne Charter, a rancher from the Bull Mountains and Chairman of the Board of the Northern Plains Resource Council in 1975, presented testimony opposed to the bill (Exhibit 11).

Ms. Nadine Oberg, representing the Montana State Democratic Women's Club, presented testimony in writing (Exhibit 12).

Senator Chet Blaylock spoke in opposition to the bill saying that there is not a single shred of evidence or proof that HB 607 will secure additional contracts. He said this was a campaign issue and that Governor Schwinden was elected in part by supporting the tax. He said that a comparison to Wyoming production does not wash. He said that if the window is opened it would never be shut. He said that the state is looking at giving away \$750 million that it cannot afford. He said the state allowed copper, silver, and gold to leave with no severance take and now we are willing to do that with coal. He concluded by saying, "We were raped and left for the flies."

Mr. Paul Smith, Montana Environmental Information Center, submitted his testimony in writing (Exhibit 13).

Senator Bill Yellowtail said that the experiment discussed would only be valid if the controls and variables were set out at the beginning. He said that the bill as written allows critical information to escape legislative review. He compared it to playing poker without seeing the cards. He presented the committee with Exhibit 14 which allows the Legislature access to critical information regarding transportation costs and contractual details.

Ms. Susan Cottingham, representing the Montana Sierra Club, said that attitudes toward the bill are three. First, are those who reluctantly support the bill because they feel it doesn't go far enough. Second are those who wonder if the message to industry will indeed change the market for Montana coal. Third, there are many who see this as an absolute first step toward permanently lowering the severance tax. She asked the second group to take a long hard look at the message. She said those supporting the bill are saying "take it or leave it".

Mr. Tony Jewett, Executive Secretary of the Montana Democratic Party, submitted his testimony against the bill in writing (Exhibit 15).

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Mr. Phil Campbell, Montana Education Association, said that over \$21 million of the interest money from coal tax has been used for public school funding. He said it would take about 25 mills state-wide to replace the lost dollars. He distributed information in Exhibit 16. He said that the signs are clear and the concern is the future. He said the bill had been amended almost at will by its proponents in the House. He said that coal production has not stopped because of our severance tax. He said school funding is already in enormous difficulty and concluded by saying, "If it is not broken, don't fix it."

Mr. Don Judge, AFL-CIO, said that there is no unanimity within the labor movement on this issue. He said that AFL-CIO stood in opposition to the bill because their conventions since the 1970s have passed resolutions in support of the coal severance tax. He said the bill is a lottery and that the coal companies have been handed the winning ticket.

Ms. Marie McAlear, representing the Montana Association of Counties, said that at their midwinter convention the delegates elected in a straw vote to not support this bill.

Chairman Mazurek then asked if representatives from the University and Burlington Northern would like to give further information on the bill neither as proponents or opponents.

Dr. Arnold Silverman, University of Montana, said that it is historically clear that Montana has maintained a constant share of the market. He figured the probability of the Sherco contract at 94 percent. He discussed the exact nature of the bids and said that the loss in revenue to the state would be \$15 million a year. He discussed transportation costs and the fact that Burlington Northern has been losing contracts because their rates are high.

Mr. Dick Sandgrin, senior assistant vice president for pricing for Burlington Northern, from Fort Worth, Texas, said that the Sherco contract for Montana coal is not a sure thing. He said that a shift in the use of the coal burned in the Twin Cities area could affect the use of Montana coal. He said that there are a number of alternatives to use of the Montana coal.

He then discussed the nature of Burlington Northern contracts and explained why they have not been able to bid competitively in all instances.

Vice Chairman Mazurek recognized Senator Towe who distributed to the committee Exhibit 17 which explained his own position on the bill, Exhibit 18 which is a map showing the Montana coal market area and Exhibit 19 which shows the relative costs of mining coal in Montana using the figures from Western Energy Company.

Vice Chairman Mazurek then asked the committee if they wished to question any of the witnesses.

Senator Halligan asked Ms. Cohea to discuss the lack of standards in the bill.

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Ms. Cohea said that when an experiment is started one cannot decide what the results will be. She added that all the information currently available would still be available. She said that the information not available is considered proprietary or is information the federal government will not release. She said that if the amendments were accepted that an unsuccessful bidder could keep a low bidder from getting the tax credit.

Senator Halligan asked if she had discussed with the companies a way to get this information through a negotiated agreement. Ms. Cohea said, yes, that the problem with public information was that an individual price to an individual utility could not be disclosed and that they were only willing to disclose average prices.

Senator Mazurek asked if the bids were already in on the Sherco contract how the bill would make any difference. Ms. Cohea said that the tax is written as a pass through in the contracts and bids.

Senator Towe said that after the bids are in they could be opened publically and it could be easily determined if the tax credit would make a difference in the contract. Ms. Cohea said there was a legal question about whose property the bid was.

Senator Eck asked if transportation costs could be made public by mutual consent. Ms. Cohea said that would not be under legislative control. Senator Eck said that the credit could be offered only if the information was available. Ms. Cohea said that kind of language would go beyond encouraging release of the information. Senator Towe said that the bill made many other requirements and he thought this one would be okay.

Senator Towe asked for a copy of the letter from Senator Bumpers mentioned in Ms. Cohea's testimony. She provided the committee with the letter (Exhibit 20).

Senator Towe and Ms. Cohea then discussed the way that incremental production would be figured and used.

Senator Blaylock responded to a question from Senator Goodover saying that the bill deals in things that are now known. He said that if the Sherco contract comes through, for example, proponents of the bill will credit the contract to the reduced severance tax when in fact that cannot be known. He said that if it could be proven he would support the bill. But he said that if the Legislature guesses wrong they have lost \$750 million.

In response to a question from Senator Hirsch, Ms. Cohea said that the bill is designed to keep the existing base production and to give no incentive to drop an existing contract.

Senator Towe questioned Ms. Cohea about the allowance and calculation of the incentive. He felt the bill was not clear in tying the two together. She said the bill is a unit and in fact has a nonsever-

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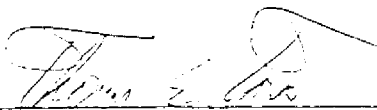
ability clause which means if one part of the bill is voided, it would all be null.

Senator McCallum asked Mr. Mockler how many new contracts had been issued since 1975. Mr. Mockler said that a number of contracts have been written, but that they do not represent a single major new commitment. Senator McCallum asked how long Montana coal would be demanded in the market place. Mr. Mockler said that it is an inconvenient fuel and that it will be in less demand with time.

Representative Quilici said in closing that he felt the odds discussed by Mr. Silverman were wrong. He said that with all due respect to Senator Yellowtail, he wanted the committee to remember that the Crow Tribe is currently in court against the state on the severance tax issue. He said that this is not just opposition to a decreased severance tax, but is opposition to coal mining period. He submitted signatures and petitions from Local 400 of the Operating Engineers rank and file in support of the bill (Exhibit 21).

He said that the people of the state would be protected by the bill. He said that he wanted to give the Governor credit because it was not easy to introduce this idea, but that it is in the best interest of the people of Montana.

Vice Chairman Mazurek turned the chair back to Chairman Towe. Chairman Towe adjourned the meeting at 10:55 am.


Chairman

1. Page 9, line 9
Following: "operators"
Insert: "and the qualified purchaser shall also provide copies of coal haul contracts for all qualified coal purchased in that year"
2. Page 10, lines 7 and 8
Following: "INSPECTION" on line 7
Strike: "--" on line 7 through "EXCEPTIONS"
on line 8
3. Page 10, line 8
Strike "(1)"
4. Page 10, lines 10 through 22.
Following: "INSPECTION" on line 10
Insert: "."
Strike: "EXCEPT" on line 10 through "jurisdiction." on line 22

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

April 17, 1985
(Second Meeting)

The seventy-fifth meeting of the Senate Taxation Committee was called to order by Chairman Thomas E. Towe at 5:15 pm in Room 413-415 of the Capitol Building.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF HB 607: Senator Halligan was recognized and said that the Yellowtail amendment needed to be offered and considered. He said that this amendment allows the coal contracts to be reviewed by the public and that the public needs to be considered in the process.

MOTION: Senator Halligan moved that HB 607 be amended per the Yellowtail amendments offered at the original hearing on the bill. (see minutes of April 11, 1985).

Senator Neuman spoke against the motion saying that the Coal Tax Oversight Committee would be able to review this material and that it was not legitimate to ask the companies to make this information public.

Senator Eck said that the information relating to the freight rates and railroads was critical and should be available.

Senator Goodover asked if these amendments had been offered in the House. Senator Towe said they were offered on the floor.

MOTION: Senator Goodover moved as a substitute motion that HB 607 be concurred in.

Senator Halligan said that the ramifications and complexities were too great without amendment to the bill. He said the committee should at least discuss them.

Senator Goodover suggested that the amendments be offered on the floor and discussed there. Senator Hirsch agreed saying that the amendments could be discussed there.

Senator Lybeck provided the committee with a copy of an article from the Western Business News (Exhibit 1) saying that lower coal tax is not a panacea.

Senator Neuman asked Senator Towe if he would accept the committee vote on the amendments if it were done now. Senator Towe asked Senator Neuman if he would accept the vote without challenging it on the floor.

Senator McCallum said that no amendments should be made to the bill.

Senator Neuman agreed that amendments should be considered at this time. Senator Goodover withdrew the motion to concur in the bill.

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(Second Meeting)

Senator Towe asked Senator Halligan for clarification of the Yellow-tail amendment. Senator Halligan closed.

Question was called. Senators Brown, Eck, Halligan, Lybeck and Towe voted yes. Senators Goodover, Hager, Hirsch, Mazurek, McCallum, Neuman and Severson voted no. The motion failed.

MOTION: Senator Eck moved that HB 607 be amended per Exhibit 2.

Senator Towe said that a technical correction was necessary and that amendment number 1 should be stricken. He said that would clarify that it would apply only to new agreements. He presented the committee with Exhibit 3 which shows the coal figures and he concluded that unless Wyoming comes down in its profit margin, Wyoming coal would not be competitive with Montana coal. He said that per these amendments the credit would not go on unless it was needed to secure the contract. He said that appropriate confidentiality is insured. The exhibit also shows how the process would work. Senator Towe distributed Exhibit 4 to the committee which demonstrates how it is possible to circumvent this bill and pay 20 percent even on the current coal contracts.

Senator Eck said that with the Driscoll amendments at least the information would be available to the Department.

Senator Hirsch asked the committee to remember the sunset provision in the bill. He said that if the credit works the companies will want to come in to convince and inform the Legislature. He said there is no need for amendment and complexity and that the committee must trust the judgement of Terry Cohea.

Senator Eck said that Ms. Cohea's concerns have been addressed by the amendment.

In response to a question from Senator Towe, Ms. Terry Cohea, Executive Assistant to Governor Ted Schwinden, said that the amendment still puts the winning bidder in a position of being unable to claim the credit without getting information from the losing bidder. She said the contract itself is not a neat package, but a complex set of decisions. She said there are many factors involved besides the final agreement.

Senator Towe said that the information would not have to come from the losing bidder. He said that the operator already has access to the necessary information and that the operator and purchaser could jointly apply. He said no company would rest a \$100 million decision on a condition not acceptable to the purchaser.

Senator Neuman said it would put the operator in the situation of peddling bids and destroy the bidding process. He said that the comparison between Montana and Wyoming provided by Senator Towe is not accurate because of mileage and transportation problems.

Senator Towe said the figures came from Mr. Hertog in Western Energy Company. He said the mileage would be between 240 and 280 miles, but

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(Second Meeting)

the 280 figure was generally used in the industry.

Senator Towe concluded that without the amendment no one can be sure what the credit will do or how it will function.

Senator Eck closed on her motion to amend HB 607.

Question was called. Senators Brown, Eck, Halligan, Lybeck and Towe voted yes. Senators Goodover, Hager, Hirsch, Mazurek, McCallum, Neuman and Severson voted no. The motion failed.

MOTION: Senator Neuman moved that HB 607 be concurred in.

Senator Towe said his fear was that the window of opportunity was now permanently open and that the reduction of the coal tax would be permanent.

Senator Neuman said that the amendments were not necessary and that they had received much discussion. He said that the problems are not that serious and that amendment would harm the bill.

Senator Hirsch noted the nonserverability clause in the bill, and said that income tax sections of the code are handled in the same way.

Senator Brown said he wanted all to understand that defeat of the amendments means that there is no chance to prove that the bill is effective. He said if this bill passes the Legislature should face the fact that the coal tax is permanently reduced. "Our constituents will make up the difference," he concluded.

Senator Towe said that the loss to the state would be about \$750 million over a 20-year period.

Senator Hirsch disagreed saying that the window was open for only two years. He said that the Governor can close the window with the stroke of a pen. He said that the Governor has made good political judgments in the past and should be trusted now.

Senator Eck said that the Governor, however, has not made a promise to veto a permanent decrease in the severance tax. She said that she felt it was a tax break and not an incentive as "anything we do will not bring new coal contracts."

Senator Goodover said that the experts say there will be no market for coal in 20 years anyway.

Senator Neuman closed on his motion. The world has changed, he said. The market for coal has changed with it. He said that state contracts are only one factor, but that a few cents on a ton of coal can make a difference and that this bill would help.

Senator Towe said that Governor Herschler of Wyoming had asked his Legislature to extend the reduction. He said that had not been adopted there because of the action's of Montana's Governor.

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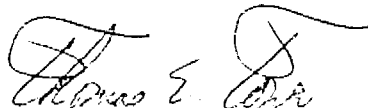
He noted to the committee that the Senate had this day debated a bill to take people off welfare and that now the Senate Taxation Committee would vote to give tax relief to coal companies.

Senator McCallum said that it was giving a break to people who needed the jobs.

Senator Neuman again closed, this time without comment.

Question was called. Senators Brown, Eck, Halligan, Lybeck and Towe voted no. Senators Goodover, Hager, Hirsch, Mazurek, McCallum, Neuman and Severson voted yes. The motion carried.

Chairman Towe adjourned the meeting at 6:15 pm.



Chairman

ROLL CALL

SENATE TAXATION COMMITTEE

49th Legislative Session -- 1985

Date April 17, 1985 *second meeting*

Location -- Room 413-415

Name Present Absent Excused

Senator Brown	✓		
Senator Eck	✓		
Senator Goodover	✓		
Senator Hager	✓		
Senator Halligan	✓		
Senator Hirsch	✓		
Senator Lybeck	✓		
Senator Mazurek	✓		
Senator McCallum	✓		
Senator Neuman	✓		
Senator Severson	✓		
Senator Towe	✓		



Tiers rejected, Wyoming tax system is in a sad state

By SAMUEL WESTERN

WESTERN BUSINESS TRENDS

CHEYENNE — The 1985 Wyoming Legislature is going to regret not doing something about the state's property-tax system.

FOR THE 48th time in a row, the Legislature failed to replace a tax system laced with inequalities that befuddle residents.

Half the blame this time can be put on the House Revenue Committee. While the Senate accepted a proposal by Sen. Robert Frisby, R-Cody, to install a system of tax tiers, the Revenue Committee trounced the idea 9-1, never clearing the bill for debate.

The Senate isn't totally off the hook. The chamber rejected a bill Sen. Frisby considered even more important than the tier-system legislation: amending the constitution.

Many legislators felt the tier system ran afoul of Article 1, Section 28 of the Wyoming Constitution because under such a law, a home in Wyoming should be taxed at the same rate as minerals, at 100 percent of fair market value.

At least two members of the House Revenue Committee said they would have treated the idea of a tier system differently if the Senate had agreed to strike the "equal and uniform" language from the constitution.

Sam Western is a free-lance writer living in Casper.

Sen. Frisby, 15 years a county assessor before coming to the Legislature, has sat on the Senate Revenue Committee every year he's gone to Cheyenne. The veteran Park County lawmaker insists the tier system is the only alternative.

A primary option is to tax all property, except minerals and agriculture, at an equal percentage — and specify those rates in the constitution: Let's treat everyone the same.

This is where politics enters the arena.

An increase in homeowner taxes is politically unacceptable, so if taxes are raised and assessed uniformly, the Legislature will turn around and grant a homeowners' exemption.

That is nothing more than a clumsy way of setting a tier.

The across-the-board method, with minerals and agriculture excluded, was tried by the State Board of Equalization recently and didn't work so well.

The Legislature has again shirked a responsibility that is clearly theirs.

The constitution says: "The Legislature *shall* prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal."

By September of next year, the state will have a new appraisal of all homes in the state and, under current regulations, the Board of Equalization will be responsible for setting the assess-

ments on personal homes.

Unless there is some radical upswing in the price of oil, Wyoming will probably experience revenue shortfall in the next three or four years.

When that happens, there will be tremendous pressure to raise taxes, and if there is no base with which to work — such as a tier system — things are going to get hot in Cheyenne.

The crucial question is whether it will get so hot that homeowners will start contributing to state coffers.

Revenue from property taxes goes to counties, cities and towns; *none* goes into the state general fund. Compared to other states, Wyoming is 48th in terms of property-tax impact on homeowners. Homes are taxed at an average of 6 percent of fair-market value.

An interim study group, led by tax whiz Rep. Ron Micheli, R-Fort Bridger, is planning to study the tax systems in other states.

Some feel the interim study group will end up recommending a tier system.

ASSUME THE worst: By 1986 the Wyoming homeowner is going to be seen as a source of revenue. If a tier system isn't installed by then, taxpayers may show delegates that they can give new meaning to the word "disgruntled." WB

DRISCOLL AMENDMENT
How It Works

Utility customers deal only in sealed bids.

Company A (Mont. Coal Mining Co.) bids \$8.50 per ton
less 1/3 of coal tax, if necessary

Company B (Mont. Coal Mining Co.) bids 8.00 per ton
less 1/3 of coal tax, if necessary

Company C (Wyo. Coal Mining Co.) bids 5.00 per ton

Utility reduces each bid to ¢ per million btu's delivered

Co. A = 123.23¢ per million btu's

Co. B = 120.10¢ per million btu's

Co. C = 126.43¢ per million btu's

Co. B gets the contract - no need to figure the tax credit.

But if Co. C bid \$4.00 and the other bids were the same:

Co. A = 123.23¢ per million btu's

Co. B = 120.10¢ per million btu's

Co. C = 120.69¢ per million btu's

We must figure the tax.

Co. A = \$1.83 per ton tax (30%) or 10.52¢ per million
btu's

Therefore their bid would be 112.71¢ per million btu's
and they would be lower than Co. C.

Co. B = \$1.72 per ton tax or 9.88¢ per million btu's

Therefore their bid would be 110.22¢ per million btu's
and they would be lower still

Co. C = remains at 120.69¢ per million btu's

Co. B is awarded the contract. Utility and Co. B apply
to Department of Revenue for credit. They need only show
Co. C's bid to get the credit.

TECHNICAL FLAWS IN HB 607

- 1) Section 3 limitations are not used in the calculation of the credit under Section 4.

--Section 3 is window dressing only -- no effect on the credit.

--Section 4 is the operative section -- how to calculate the credit.

--Example -- an existing agreement extended for 4 years would produce "incremental production" for all 4 years and all would qualify.

--In effect, the window is permanently open. The June 30, 1987 termination date is in Section 3 and will not be taken into effect in the calculation.

- 2) The language does not contemplate a new mine operator or a new purchaser.

--If a mine operator is new (such as Montco) and had no production in 1983 and 1984, he cannot have a "base production level." You could imply his base production level was zero, but a court might rule that the legislature clearly intended to exclude a new mine operator.

--The same applies to a new purchaser (who has not purchased Montana coal before). He would have no base consumption level.

- 3) The limitations could be avoided by forming a partnership. (Assuming #1 and #2 above were corrected).

--Example -- NSP and Minnesota Light and Power could build a new plant together as partners, and include an old NSP plant (or several plants) into the partnership. NSP could let Minnesota Light and Power buy all the coal -- they would qualify for the credit -- and NSP could terminate its existing contracts. As a result, all the coal under existing NSP contract would receive the credit.

- 4) The limitations could be avoided by forming subsidiaries.

--A coal mine operator could reorganize under a corporate reorganization -- spin off a subsidiary -- and have the subsidiary enter into a new contract that qualifies for the credit with a subsidiary of the utility company. As soon as the new contract is signed, they terminate the old contract and the credit applies to the whole amount.

- 5) The problems in #3 and #4 above could be avoided by a certification process as proposed by the coal companies or by granting discretion to the Dept. of Revenue as proposed by the Driscoll Amendments.

- 6) The bill actually acts as a disincentive for long term contracts. As Mike Gustafson of WESCO Resources (Montco) pointed out in the Billings Gazette Sunday, a purchasing utility company must renew its existing contracts with Montana producers when they come due or they will lose the credit. Because of this they will likely only contract until 1993 or 1995 when their existing contracts come up for renewal rather than the customary 20 years. This way the utilities will preserve more flexibility.

- 7) The coal companies have generally washed their hands of the project and no longer support the bill.

--In fact, many are opposed to it because there is no chance for them to "put up" and they will lose their chance to work on lowering the tax in the future.

- 8) It is nearly special interest legislation. Only one company, NSP, is likely to benefit and they already have their bids in. Only 2 producers, Western Energy and Westmoreland are genuine bidders. The bill was written primarily by Western Energy.

ROLL CALL VOTE

SENATE TAXATION COMMITTEE
49 th Legislative Session -- 1985

Time _____ Date April 17, 1985 Room 413-415

Motion: That HB 601 be amended per
Substitute 2. Eck

Name	Yes	No	Excused
Senator Brown	✓		
Senator Eck	✓		
Senator Goodover		✓	
Senator Hager		✓	
Senator Halligan	✓		
Senator Hirsch		✓	
Senator Lybeck	✓		
Senator Mazurek		✓	
Senator McCallum		✓	
Senator Neuman		✓	
Senator Severson		✓	
Senator Towe	✓		

ROLL CALL VOTE

SENATE TAXATION COMMITTEE
49 th Legislative Session -- 1985

Time 5:50 pm Date April 17, 1985 Room 413-415

Motion: That HB 607 be amended per
Yellowtail amendments Halligan

Name	Yes	No	Excused
Senator Brown	✓		
Senator Eck	✓		
Senator Goodover		✓	
Senator Hager		✓	
Senator Halligan	✓		
Senator Hirsch		✓	
Senator Lybeck	✓		
Senator Mazurek		✓	
Senator McCallum		✓	
Senator Neuman		✓	
Senator Severson		✓	
Senator Towe	✓		

Amend HB 607, 3rd Reading (Blue) Copy

1. Page 5, line 23.

Following: "(1)"

Strike: "A"

Insert: "Subject to the provisions of subsection (4), a"

2. Page 6, line 3.

Following: "(2)"

Strike: "A"

Insert: "Subject to the provisions of subsection (4), a"

3. Page 6.

Following: line 15

Insert: "(4) The credit allowed in subsection (2)(b) is available to a coal mine operator only upon joint application to the department by the coal mine operator and a qualified purchaser. The department may not grant the credit applied for unless the applicants establish that, but for the credit, the contract would not have been awarded to the applicant coal mine operator. Evidence that a competing coal mine operator submitted a bid to the purchaser that, but for the credit, would be lower than the applicant coal mine operator's contract price with the qualified purchaser figured on the price per million BTUs delivered to the qualified purchaser's plant is conclusive and binding on the department. The application shall be made in the same manner as a petition for a ruling provided in Section 4(4). Such a ruling may be limited to whether or not the applicants are eligible for the credit under this subsection, leaving the qualifications under other provisions for later determination.

4. Page 10, line 18.

Following: "Section 5(1)(B)"

Insert: "and Section 3(4)"

ROLL CALL VOTE

SENATE TAXATION COMMITTEE
49 th Legislative Session -- 1985

Time _____ Date April 17, 1985 Room 413-415

Motion: that HB607 be Newman

Name	Yes	No	Excused
Senator Brown		✓	
Senator Eck		✓	
Senator Goodover	✓		
Senator Hager	✓		
Senator Halligan		✓	
Senator Hirsch	✓		
Senator Lybeck		✓	
Senator Mazurek	✓		
Senator McCallum	✓		
Senator Neuman	✓		
Senator Severson	✓		
Senator Towe		✓	

STANDING COMMITTEE REPORT

April 17, 1985

MR. PRESIDENT

We, your committee on Taxation
having had under consideration House Bill No. 607
third reading copy (blue)
color
(Senator Newman)

PRODUCTION INCENTIVE TAX CREDIT TO COAL SEVERANCE TAX.

Respectfully report as follows: That House Bill No. 607

BE CONCURRED IN

XXXXXX

XXXXXXXXXXXX

Senator Thomas E. Towe, Chairman.